IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 683 of 2015

The Oriental Insurance Co. Ltd.,
No. 134, Esplanade Branch, III Floor,
Chennai - 600 001. ... Appellant

Vs.

1.Dhanunjaya
2.G. Masapu ... Respondents

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act 1988 as against the judgment and decree dated 16.10.2014 passed in M.C.O.P. No. 5435 of 2011 by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For Appellant : Mr.N. Vijayaraghavan

For Respondents : Mr.F. Terry Chellaraja for R1

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Insurance Company as against the award of Rs.11,92,400/- passed by the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, in favour of the 1st respondent herein for the injuries sustained by him in the accident, which occurred on 21.05.2011.

2. Heard Mr.N. Vijayaraghavan, learned counsel for the appellant and Mr.F. Terry Chellaraja, learned counsel for the 1st respondent/claimant.

3. A perusal of the records would reveal that the 1st respondent sustained fracture shaft left humerus with Wrist Drop, Type-II Schatzker fracture left tibia and lacerated would left side forehead. He underwent surgery on 22.05.2011 and on 25.05.2011 whereby ORIF left humerus and ORIF lateral condyle left tibia and re-

suturing of laceration left forehead was done. Though P.W.2, Doctor, assessed the disability at 90% as partial permanent, taking into consideration the fact that P.W.2 Doctor did not give treatment to the injured, the disability was fixed by the Tribunal at 60% and the said determination does not warrant any interference.

4. The 1st respondent/claimant is a Driver and he suffered fracture shaft left humerus with Wrist Drop, Type-II Schatzker fracture left tibia, which is said to have been malunited left humerus, fibrosis muscles, muscle power 3/5, abduction 80 degrees, elbow flexion 80 degrees, wrist drop, left hand power ext 3/5 and therefore, the claimant cannot work with his left hand. Therefore, the Tribunal determined the loss of earning capacity of the claimant as 40%. The said determination is found to be reasonable and hence, sustained.

5. The claimant was aged about 32 years at the time of accident and his income, though stated to be Rs.9000/- per month, was fixed by the Tribunal at Rs.8000/- per month. Considering the date of accident and the avocation of the claimant as Driver, fixing of Rs.8000/- as his monthly income is quite reasonable and the same is sustained. As per the age of the claimant, the appropriate multiplier, 16, was applied and "Loss of Earning Capacity" was rightly determined as Rs.6,14,400/- (Rs.8000 x 12 x 16 x 40%). For 60% disability, a sum of Rs.1,20,000/- was rightly awarded @ Rs.2000/- per percentage of disability. Taking into consideration, the period of treatment, Rs.40,000/- was awarded towards "Loss of Income for 5 months", which is reasonable. A sum of Rs.2,52,000/- was awarded towards "Medical Expenses" based on Exs-P5 and P6 and the same is confirmed. Further, Rs.15,000/- awarded towards "Transportation Expenses", another sum of Rs.15,000/- awarded towards "Extra Nourishment", Rs.1000/- granted towards "Damage to Clothes", Rs.20,000/- awarded towards "Attendant Charges", Rs.35,000/- awarded towards "Loss of Amenities of life", Rs.30,000/- awarded towards "Future Medical Expenses" and Rs.50,000/- awarded under the caption "Pain and Suffering" are reasonable amounts and they are confirmed. Hence, the award passed by the Tribunal, to the tune of Rs.11,92,400/- together with interest @ 7.5% per annum is confirmed.

6. The appellant Insurance Company is directed to deposit the entire award amount, with interest and costs, after deducting the amount, if any, already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. As observed by the Tribunal, the claimant would not be entitled to any interest on the amount awarded towards "Future Medical Expenses". On such deposit being made, the Tribunal is

directed to re-invest the same in any one of the Nationalised Banks, in interest bearing Fixed Deposit, at least for a period of 3 years and the claimant is permitted to withdraw interest accruing on such deposit, once in three months.

7. In the result, the Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. No costs. Connected M.P. Is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

+1cc to Mr.M.Malar, Advocate, S.R.No.19152
+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.19353

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CNR(CO)
CA(03/06/2015)