

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2015

CORAM

THE HON'BLE MR.JUSTICE N. KIRUBAKARAN

C.M.A.No.2639 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
IFFCO - TOKIO,
General Insurance Company Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai - 600 017.Appellant (2nd Respondent)

/vs/

1.Velu

2.RenuRespondents
(R2 set exparte) (Petitioner & 1st Respondent)

Prayer: Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award made in MCOP No.198/2011 dated 19.07.2013 on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) Thiruvannamalai and allow this appeal.

For Appellant : Mr.C.R.Krishnamoorthy

For Respondents : Mr.B.Jawahar [R1]

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the award of Rs.1,58,000/- awarded by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Tiruvannamalai, as compensation for the injuries sustained by the first respondent/claimant, in the accident that had occurred on 28.03.2011.

2. Heard the parties and perused the records.

3. The Tribunal, taking into consideration of PW2 doctor's evidence and medical records, determined the disability at 30%, even though PW2 spoke about 45% disability and awarded Rs.60,000/- towards disability. Including other amounts, a total sum of Rs.1,58,000/- was awarded by the Tribunal. The Tribunal should have gone by PW2 doctor's evidence and determined the disability at 45% especially, when the claimant sustained fracture below the joint, malunion of the bones and disfigurement. The claimant also has pain while walking and she cannot work normally. The movement of leg is restricted and she finds it difficult to squat on the floor. When such is the position, the Tribunal should have determined permanent disability at 45% as per PW2 doctor's evidence. In the absence of any contra medical evidence, the Tribunal ought not to have fixed the disability at 30%. Therefore, this Court re-determines the permanent disability at 45% and awards Rs.2,000/- per each percentage of disability amounting to a sum of Rs.90,000/- towards disability. Rs.20,000/- awarded towards pain and suffering is low. Hence, the sum of Rs.20,000/- is enhanced to Rs.50,000/- for pain and suffering. Similarly Rs.10,000/- each awarded towards extra nourishment and transportation is enhanced to Rs.25,000/- and Rs.20,000/- respectively. The amount awarded towards attendant charges is very meagre and hence, the same is enhanced to Rs.10,000/-. As the claimant was admitted in the hospital from 31.03.2011 to 14.05.2011, for more than one and half month, Rs.18,000/- was awarded towards loss of income during the period of treatment, taking Rs.4500/- as monthly income and the same is confirmed. Similarly, Rs.1,000/- awarded towards damage to clothes and Rs.34,000/- awarded towards medical expenses as per Ex.P5 are confirmed. Therefore, the award amount of Rs.1,58,000/- is enhanced to Rs.2,48,000/- rounded off to Rs.2,50,000/- along with interest at the rate of 7.5% per annum.

4. Since the driver of the offending vehicle did not possess effective valid driving licence, the Tribunal, based on the evidence available on record, ordered pay and recovery of the compensation and the said finding is confirmed.

5. Eventhough the appeal has been filed by the Insurance Company, this Court, has, suo motu, enhanced the compensation amount payable to the 1st respondent/claimant, even in the absence of any appeal/cross-appeal by the claimant. An appeal is a continuation of original proceedings and this Court is bound to re-appreciate the evidence and pleadings on record and award just compensation, as

contemplated under the Act. The provisions of Motor Vehicles Act are beneficial in nature, which aim at consoling, comforting and compensating the victims of road accidents. This Court has power and jurisdiction under Order XLI rule 33 CPC to award more compensation and this has also been recognised by the Honourable Apex Court. Hence, in an endeavour to award just and adequate compensation, the award of the Tribunal, to the tune of Rs.1,58,000/- is enhanced to Rs.2,50,000/-.

6. The appellant is directed to deposit the entire modified award amount along with interest and cost, after deducting the amount, if any, which was already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent/claimant is permitted to withdraw the entire amount within a period one week thereafter. The 1st respondent/claimant shall pay additional court-fee for the enhanced amount, if any.

7. In the result, the Civil Miscellaneous appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The MACT

(Chief Judicial Magistrate Court),
Tiruvannamalai.

1 CC to Mr.C.R.Krishnamoorthy, Advocate SR.No. 31853

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C.M.A.No.2639 of 2014
and
MP.No.1 of 2014

CNR (CO)

PSI (11.08.2015)