

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.M.A.No.3478 of 2014

and

M.P.No.1 of 2014

The Divisional Manager,
M/s. New India Assurance Company Ltd.,
No.1, Officer's Line,
Vellore District.

..Appellant/Respondent-II

Versus

1.D.Ezhumalai

..Respondent-1/Petitioner

2.M.Vasudevan

..Respondent-2/Respondent-I

Prayer: Civil-Miscellanies Appeal has been filed under Section 173 of the Motor Vehicles Act of 1988, against the Judgement and decree dated 26.06.2014 passed in M.C.O.P.No.67 of 2012 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate), Vellore.

For Appellant

:Mr.J.Chandran

For RR1

:Mr.E.Kannadasan

JUDGMENT

Questioning the quantum of the award to the extent of Rs.5,29,156/-, passed by the Tribunal in the claim petition in MCOP No.67 of 2012, the appellant/Insurance Company, who is the second respondent in the claim petition has preferred this Appeal under Section 173 of the Motor Vehicles Act 1988.

2. The first respondent/claimant had moved the Claims Tribunal with a claim petition in MCOP No.67 of 2012, claiming a total sum of Rs.15,00,000/- for the injuries sustained by him, in a road traffic accident, said to have been taken place on 27.02.2011 at about 09.00 p.m., involving a vehicle viz., load Van bearing registration No.KA-05-AA-515.

3. As per the first respondent/claimant, he was aged about 56 years, at the time of accident and was working as a Watchman. His monthly income was determined by the Tribunal at Rs.4500/-.

4. It is revealed from the records that the first respondent/claimant, as per PW2, Dr. Shanmugasundaram, was suffered with 60% of disability. However, the Tribunal had reduced the same to the extent of 48%. Considering the nature of the injuries as well as the percentage of the disability, the Tribunal had proceeded to pass an award to the extent of Rs.5,29,156/- under the following heads:

Sl.No.	Particulars	Amount (Rs.)
1	For disability 48%(48x1500)	72,000/-
2	For Pain and Sufferings	1,50,000/-
3	For loss of income (4500x24=1,08,000/-)	1,08,000/-
4	For Medical Expenses	1,24,156/-
5	For Transportation	25,000/-
6	For Extra Nourishment	50,000/-
	Total	5,29,156/-

5. Mr.J.Chandran, learned counsel appearing for the appellant has pointed out that insofar as pain and sufferings is concerned, the Tribunal had awarded a sum of Rs.1,50,000/-, which is disproportionate and fanciful and therefore, the award under this head might be deleted.

6. On the other hand, Mr.E.Kannadasan, learned counsel appearing for the claimants has submitted that as per the judicial pronouncements of the High Court, per 1%, Rs.3000/- is awarded towards disability but insofar as 48% of the disability is concerned, the Tribunal had granted lesser award to the extent of Rs.72,000/- i.e., (48% X1500 per 1%).

7. This Court has considered the arguments made on behalf of both sides and perused the award also.

8. As contended by Mr.J.Chandran, learned counsel appearing for the appellant, the award in respect of pain and sufferings seems to be excessive, and therefore, Rs.50,000/- can be reduced, out of Rs.1,50,000/- and Rs.1,00,000/- can be awarded towards the pain and sufferings. Accordingly, this Court has modified the award to the extent of Rs.4,79,156/-.

9. Keeping in view of this fact, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. It is brought to the notice of this Court that the entire award amount was already deposited. Therefore, the first respondent/claimant is at liberty to withdraw the entire modified award amount with accrued interest and costs without filing any formal application seeking permission. The excess amount, if any, deposited by the Insurance Company shall be refunded.

11. Registry is directed to send back entire records to the Tribunal.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dn

To

1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate),
Vellore.

2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to M/s. J. Chandran, Advocate SR.35754

+ 1 cc to MR.E. Kannadasan, Advocate Sr.35063(07.11.16)

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C.M.A.No.3478 of 2014
and

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MP(CO)
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