



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2016

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A(MD)No.893 of 2015
and
M.P(MD)No.1 of 2015

The Oriental Insurance Company Limited,
Through its Divisional Manager,
Door No.16, North Veli Street,
Madurai - 625 001.

.. Appellant/2nd Respondent

-Vs-

1.A.Umar Sherif

.. 1st Respondent/Petitioner

2.M.Mari Palaniappan
(2nd respndent remained ex-parte
before the lower Court)

.. 2nd Respondent/1st Respondent

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award made in M.C.O.P.No.561 of 2013, dated 12.01.2015 on the file of the Motor Accident Claims Tribunal-cum-Special Sub-Judge, Madurai.

For Appellant	: Mr.K.Bhaskaran
For R-1	: Mr.J.Lawrance
For R-2	: No Appearance

JUDGMENT

The accident took place on 06.11.2011 at about 21.15 hours at Madurai Azhagarkovil Main Road near Thaamarai Thotti and in which, the claimant suffered cut injuries in the forehead and multiple injuries all over the body. The injured filed claim petition in M.C.O.P.No.561 of 2013 before the Motor Accident Claims Tribunal. The Tribunal considering the facts and the circumstances of the case, awarded a sum of Rs.5,42,750/- as total compensation.

2. The appellant/Insurance Company filed the present appeal challenging the award, solely on the ground that there is negligence on the part of the injured claimant and therefore, the Tribunal ought to have fixed contributory negligence while awarding compensation.



3. The learned counsel for the appellant contended that the Tribunal made a finding that as per the charge sheet, the unfortunate accident took place due to the carelessness of the injured claimant and therefore, the contributory negligence ought to have been fixed on the part of the injured claimant.

4. The learned counsel for the first respondent opposed this appeal by stating that the compensation awarded, is just and proper and the same is to be confirmed.

5. But the fact remains that the first respondent/claimant is an Engineering Graduate and aged about 24 years at the time of accident. But, presently he had gone to Saudi Arabia and working there. Therefore, this Court is to consider that he is able to travel to Saudi Arabia and now employed there and earning. Hence, this Court is of the opinion that the compensation amount granted under the head of 'Part Permanent Disability' is to be reduced and hence, amount of Rs.42,750/- is to be reduced and the claimant is entitled to compensation of Rs.5,00,000/-

6. In the result, the Civil Miscellaneous Appeal is partly allowed with modification that the total compensation of Rs.5,42,750/- awarded in M.C.O.P.No.561 of 2013, dated 12.01.2015 on the file of the Motor Accident Claims Tribunal-cum-Special Sub-Judge, Madurai, is reduced to Rs.5,00,000/-. The findings of the Tribunal in all other aspects are confirmed.

7. The learned counsel for the appellant represented that the entire award amount was deposited. The 1st respondent/claimant is permitted to withdraw the modified award amount with accrued interests and costs through RTGS by filing necessary application before the Tribunal concerned. The appellant is permitted to withdraw the excess amount, over and above Rs.5,00,000/- with accrued interest, out of the amount deposited by them. No Costs. Consequently, M.P(MD)No.1/2015 is closed.

Sd/

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal-cum-Special Sub-Judge, Madurai.

+1cc to M/s.J.Lawrance, Advocate, in SR No.67873.

+1cc to M/s.K.Bhaskaran, Advocate, in SR No.67121.

pm

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