

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 08.02.2017

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THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 407 of 2017

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C.M.P. No.2849 of 2017

The New India Assurance Co., Ltd.,
No.1, Bharathi Road,
Cuddalore.

.. Appellant /3rd Respondent

Versus

1.G.Selvakumar
2.Govindharajan
3.M.Ganesan

... Respondents/Petitioners 1&2
1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.12.2005, passed in M.C.O.P.No.284 of 2003, by the Motor Accidents Claims Tribunal (Fast Track Court-III), Virudhachalam

For appellant : Mr. R.Subbiah

J U D G M E N T

Challenging the finding of liability as well as quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.284 of 2003 the Insurance Company has filed this Appeal.

2. The claimant, Selvakumar, aged 25 years a Diploma Holder, met with an accident on 20.04.2001 due to which he sustained head injury injuries and compound fracture all over the body. Hence, he filed a claim petition in M.C.O.P.No.284 of 2003, seeking compensation for a sum of Rs.2,00,000/-.

3. The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs.1,00,000/-, the break-up details are as follows:

Pain and Suffering	-	Rs.25,000.00
Loss of future earnings	-	Rs.75,000.00

Total		Rs.1,00,000/-

4. The learned counsel for the appellant submits that the compensation awarded by the Tribunal is very high and the same needs to be reduced. It is further submitted that the Claims Tribunal has erred in holding the accident had happened due to the negligence of the driver of the car, which is not correct. It is further submission that the Claims Tribunal has failed to examine the doctor to speak the disability sustained by the Claimant.

5. The order passed by the Claims Tribunal reveals that based on Ex.P-6, Accident Register copy, the claims Tribunal has fixed the age of the claimant as 28 years. Since the claimant has sustained head injury, due to which he had mental problem and was not in a position to give evidence, his father was impleaded in the claim petition and has given evidence on behalf of his son. Keeping in mind the future of the claimant the Tribunal has awarded a sum of Rs.25,000/- towards Pain and sufferings was awarded a sum of Rs.75,000/- towards Loss of future earnings.

6. From a perusal of the order passed by the Tribunal it is clear that the Tribunal, appreciating the evidence available on record and keeping in mind the nature of injuries sustained by the claimant and the period of treatment and the impact of the injuries on day-to-day activities of the claimant has awarded compensation. Further, the award reveals that the Tribunal has awarded compensation only under two heads and the other heads such as medical expenses, loss of enjoyment of amenities, attender charges, etc., have not been considered by the Tribunal. In such circumstances, the contention of the appellant that the award passed is excessive is unsustainable. The compensation awarded, though falls short of consideration on several heads, however, this Court is not inclined to consider enhancement of the same at this point of time. The award passed is not excessive and, therefore, the same does not require any interference.

7. Insofar as the contention relating to negligence is concerned, the Tribunal, on a careful analysis of the evidence available on record has fixed the negligence on the part of the driver of the car. No contra evidence to dispute the evidence on record having been adduced by the appellant, the contention of the appellant that the finding on negligence is incorrect is

liable to be rejected.

8. For the reasons aforesaid, this Civil Miscellaneous Appeal is dismissed confirming the Judgment and Decree of the Claims Tribunal in M.C.O.P.No.284 of 2003 dated 23.12.2005. Consequently, connected Miscellaneous Petition is closed.

9. The appellant is directed to deposit the award amount along with interest and costs as quantified by the Tribunal, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same directly to the Bank account of the claimant through RTGS within a period of two weeks thereafter.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arr/GLN

To

1. The Presiding Officer
The Motor Accident Claims Tribunal,
(Fast Track Court-III) Virudhachalam
2. The Section Officer, VR Section,
High Court, Madras.

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