

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 31.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.440 of 2017

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C.M.P.No.2965 of 2017

The Divisional Manager,
The New India Assurance Company Ltd.,
Division Office, J.N. Street,
Pondicherry.
Rep. by the Deputy Manager,
Motor Third Party Claims Cell
45, Moore Street, Chennai-600 001 ... Appellant/2nd Respondent

Versus

1. M. Aboorvam R1/Petitioner
2. V. Namadevan R2/R1

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award made in M.A.C.O.P.No.497 of 2002 dated 07.09.2004 on the file of the Sub Court Motor Accident Claims Tribunal (Additional Sub Court) at Cuddalore.

For appellant : Mr.M.Dhamodharan

J U D G M E N T

Challenging the liability and quantum of compensation awarded by the Claims Tribunal in M.C.O.P. No.497 of 2002, dated 07.09.2004, the Insurance Company has filed this Appeal.

2. The claimant one N.Aboorvam, aged 55 years, working a Labourer in packing company, earning a sum of Rs.3,000/- per month met with an accident on 07.03.2002. Due to which, she sustained grievous injuries which included fracture in left leg. Hence, he filed a Claim Petition in M.A.C.T.O.P.No.497 of 2002, seeking compensation for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only). The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs.1,07,990/- @ 9% per annum from the date of petition till the date of deposit. The break-up details of the same are as under:

Permanent disablement	-	Rs. 40,000/-
Medical Bills	-	Rs. 27,990/-
Pain and sufferings	-	Rs. 10,000/-
Loss of earnings	-	Rs 30,000/-
Total		<u>Rs.1,07,990/-</u>

3. The learned counsel for the appellant would submit that the compensation awarded by the Tribunal is very high and the same needs to be reduced. It is his further submission that the Tribunal is not right in fixing the negligence on the part of the driver of the offending vehicle.

4. A perusal of the award passed by the Claims Tribunal would go to show that the Claims Tribunal, on considering the evidence of P.W.1 coupled with Ex.P1- First Information Report, has rightly fixed the negligence on the part of the driver of the motor cycle. It is appropriate to point out that the best person viz., the driver of the offending vehicle had not been examined and in the absence of the best evidence, the Tribunal is entitled to draw adverse inference and hence the finding of negligence cannot be interfered with.

5. As far as quantum of compensation awarded by the Claims Tribunal is concerned, a sum of Rs.10,000/- is awarded towards pain and sufferings in a case of fracture, a sum of Rs.27,990/- towards medical expenses, (which is supported by Medical bills (Ex.P5)) cannot be said to be excessive. The Claims Tribunal, on considering the evidence of P.W.2- Doctor who examined the Claimant and issued Ex.P2- Disability certificate, has awarded a sum of Rs.40,000/- towards permanent disablement, which is reasonable. The Claims Tribunal observed that since the claimant sustained fracture in the left leg and grievous injuries and got hospitalized from 09.03.2002 to 24.03.2002, there was a loss of earnings and thus awarded, a sum of Rs.30,000/- was awarded towards Loss of Earnings which is also reasonable.

5. In view of the same, this Civil Miscellaneous Appeal is dismissed confirming the Judgment and Decree of the Claims Tribunal in M.C.O.P.No.497 of 2002 dated 26.03.2002. The Insurance Company is directed to deposit the entire compensation awarded by the Tribunal, less the amount already deposited, if any along with interest @ 9% per annum from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit

being made, the claimant is permitted to withdraw the compensation amount. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accident Claims Tribunal,
(Additional Sub Court) at Cuddalore.
2. The Section Officer, VR Section,
High Court, Madras.(2 Copies)

C.M.A. No.440 of 2017
and
C.M.P.No.2965 of 2017

RV(CO)
NR 20/12/2017



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