



IN THE HIGH COURT OF JUDICATUE AT MADRAS
DATED 16.06.2017
CORAM
THE HONOURABLE DR. JUSTICE S.VIMALA

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C.M.A. No.1829 of 2017
and
C.M.P. No.9854 of 2017

The National Insurance Company Limited,
No.165, Nethaji Road, Majakuppam,
Cuddalore. .. Appellant/2nd Respondent

versus

1. G.Mahalakshmi
2. J.Srinivasan .. Respondents/Petitioner/
1st Respondent

Appeal filed under Section 173 (1) of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.04.2007 and made in M.C.O.P.No.23 of 2007 on the file of Motor Accidents Claims Tribunal, Additional Subordinate Judge No.1, Cuddalore and praying to set aside the same.

For appellant : Mr. S.Vadivel

J U D G M E N T

As against the claim made for a sum of Rs.5,00,000/-, an award has been passed for a sum of Rs.2,95,987/-. Challenging this award and the liability, the Insurance Company has filed the Appeal.

2. In the accident that happened on 2.7.04, the claimant, viz., the 1st respondent herein sustained injuries for which she filed a claim petition claiming a sum of Rs.5,00,000/= as compensation. The Tribunal, considering the oral and documentary evidence, awarded a sum of Rs.2,95,987/- along with interest at 7.5% per annum from the date of claim petition till date of deposit. The insurance company, disputing its liability to pay the amount, has also questioned the award as highly disproportionate.

3. It is pertinent to point out that even though the Insurance Company has disputed the liability, however, no evidence has been adduced on the part of the Insurance Company before the Tribunal. Therefore, it is not open to the Insurance Company to dispute the liability without offering any evidence.

4. So far as the quantum of compensation is concerned, the injured Mahalakshmi was aged 35 years, was working as a Coolie and Caterer and earning a sum of Rs.5,000/- per month. She suffered grievous injuries consequent upon which she suffered permanent disablement, which has been certified by the doctor at 65%.



5. Though it is the evidence of the claimant that she was aged 35 years and earning a sum of Rs.5,000/- per month, however, for want of any documentary evidence, the Tribunal fixed the monthly income of the claimant at Rs.2,000/=. P.W.2, the doctor, has been examined to speak about the nature of disablement, who has deposed that there has been dislocation of joint bones in the right wrist. Apart from that, there was fracture on radial bone in the right hand and that the claimant suffers from pain while moving the hip bones. Considering all the injuries suffered by the claimant and also taking note of the disability certified at 65%, the Tribunal assessed the loss of earning capacity at Rs.2,65,200/-. To the above amount, medical expenses to the tune of Rs.787/- has been awarded. A sum of Rs.20,000/- has been awarded towards pain and sufferings; Rs.10,000/- towards extra nourishment and Rs.1,000/- towards transport expenses. In all, the total compensation has been quantified at Rs.2,95,987/-.

6. A perusal of the award reveals that no amount has been awarded towards loss of enjoyment of amenities. Future prospective increase in income has not been added while fixing monthly income. In such circumstances, the award cannot be said to be excessive, especially when the award was passed in the year 2007, which is challenged in the year 2017, during which the value of the money has been gone down drastically. Therefore, it cannot be said that the amount awarded is excessive or disproportionate.

7. For the reasons aforesaid, finding no merit, this appeal is dismissed. Consequently, connected miscellaneous petition also dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkp/srk/GLN

To

1. The Additional Subordinate Judge No.1
Motor Accidents Claims Tribunal
Cuddalore

2. The Section Officer, VR Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.Vadivel, Advocate Sr.No.42664

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KK(CO)

sm:6.3.2018

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