IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 16.06.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1904 of 2017
and
C.M.P.No.10194 of 2017

The National Insurance Company Limited,
Pondicherry.
.. Petitioner/2nd Respondent

versus

1. Govindarasu @ Govindaraj
2. Erudayanathan .. Respondents/Petitioner/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 19.10.2005 and made in M.A.C.T.O.P.No.288 of 2004 on the file of the Additional District Court (Fast Track Court No.2 Cuddalore (Cuddalore District Court M.A.C.T.O.P.No.488 of 2002) (Cuddalore Subordinate court M.A.C.T.O.P.No.406 of 2002).

For Appellant : Mr. S.Vadivel

J U D G M E N T

As against the claim made for a sum of Rs.2,00,000/-, award has been passed for a sum of Rs.1,33,800/-. Challenging the award as excessive and disproportionate, the National Insurance Company has filed this Appeal.

2. The facts relevant for consideration:-

The injured Govindarasu @ Govindaraj, aged 41 years, Mason by profession, earning a sum of Rs.4,500/- per month, met with an accident on 09.09.2001. He filed a claim petition claiming compensation in a sum of Rs.2,00,000/-.

2. The Tribunal on consideration of the materials placed before it, awarded a sum of Rs.1,33,800/- as compensation. The insurance company, questioning the liability as well as the excessive compensation awarded has preferred the present appeal.

3. The case of the Insurance Company is that, the Claimant was traveling in an Auto as unauthorised passenger. Though such a stand has been taken by the insurance company, however, no evidence has been adduced by the insurance company to substantiate the said contention. In the absence of any evidence to substantiate the said contention, the Tribunal rejected the said contention and fastened the liability on the insurer to compensate the claimant. Even before this Court, the appellant/insurance company has not placed any material to substantiate the above said contention. In the above circumstances, in the absence of any evidence, the contention that the claimant was an unauthorised passenger cannot be accepted and, accordingly the said contention is rejected confirming the view of the Tribunal.

4. Insofar as the quantum of compensation is concerned, the following details are relevant. The Petitioner/Claimant suffered fracture and crush injury over the left foot. Immediately after the accident he had been admitted in an in-patient in the Government General Hospital, Pondicherry and later he had taken Private treatment. The doctor, who treated the claimant has issued the disability certificate from which it is evident that there had been fracture on the first and second bones in the fingers of the claimant. Even though the doctor has assessed the disability at 25%, however, the Tribunal has taken the disability only at 20%. Therefore, no interference is called for relating to assessment and fixation of disability.

5. Though the claimant had claimed that he was earning a monthly income of Rs.4,500/-, however, in the absence of any substantive material, the Tribunal has fixed monthly income only at Rs.900/-. Placing reliance upon the decision of 2005 (1) TNMAC 87 (DB) United India Insurance Company Vs. Velusamy and another, the Tribunal has calculated the loss of earning capacity. The Tribunal, fixing the age of the Claimant at 41 years and adopting the multiplier of 11, has quantified the loss of earning capacity. The said quantification meets the parameters as laid down in Sarla Verma's case. Therefore, no interference is called for with the said quantification. Further, the Tribunal has awarded a sum of Rs.5,000/- under the head pain and suffering.

7. A careful perusal of the award passed by the Tribunal further reveals that no compensation has been awarded under the heads Transport Expenses, Medical Expenses, loss of enjoyments of amenities, etc., Further, the future prospective increase in income has also not been considered. In such a backdrop, the contention of the appellant/insurer that the compensation awarded is excessive and is on the higher side cannot be sustained. The Tribunal has quantified the total compensation

in a sum of Rs.1,33,800/-, which, considering the entire evidence available on record and the compensation awarded under the various heads, could be termed to be excessive or unreasonable. Therefore, this Court is of the considered opinion that no interference is called for with the compensation awarded by the Tribunal.

8. In the result, for the reasons stated above, the appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

9. The appellant/insurance company is directed to deposit the award amount together with interest as awarded by the Tribunal from the date of claim petition till the date of deposit, less the amount, if any, 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 amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

rkp/srk/GLN
To

1. The Additional District Judge, Fast Track Court No 2
   Motor Accidents Claims Tribunal, Additional District Court,
   Cuddalore

2. The Subordinate Judge, Cuddalore.

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

+1 CC to Mr.S. Vadivel, Advocate sr 42663.

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KK(CO)
SP(28/02/2018)