IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2017

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THE HONOURABLE Dr. JUSTICE. S.VIMALA
C.M.A.No.2260 of 2017
and C.M.P.No.11990 of 2017

National Insurance Co. Ltd.,
Rep. by its Branch Manager,
No.312, Jawaharlal Nehru Street,
Pondicherry. ... Appellant / 3rd Respondent

versus

1. Paneerselvam ... 1st respondent/Claimant
2. Muthuraman ... 2nd respondent/1st respondent
3. Arumugam ... 3rd respondent/2nd respondent

(R2 and R3 remained ex parte before the Tribunal)

Prayer: Appeal filed under Section 173 of Motor Vehicle Act 1988, against the Judgment and Decree dated 19.03.2010 made in M.A.C.T.O.P.No.20 of 2008 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Karaikal

For Appellant : M/s.M.Krishnamoorthy

JUDGMENT

The claim petition in M.A.C.T.O.P.No.20 of 2008 has been filed one Paneerselvam, a load man, aged 40 years, claiming a sum of Rs.6,00,000/- as compensation in respect of injury sustained by him in an accident.

2. The Tribunal, on consideration of materials, both oral and documentary, awarded a sum of Rs.1,70,200/- as compensation under the following heads :-

Disability	-	Rs. 30,000/-
Future loss of income	-	Rs.1,15,200/-
Extra nourishment	-	Rs. 5,000/-
Pain and suffering & mental agony	-	Rs. 20,000/-
Total	-	Rs.1,70,200/-

Challenging the liability as well as the quantum of compensation, the Insurance Company has filed this appeal.

3. The learned counsel appearing for the appellant Insurance Company reiterated the grounds taken in the grounds of appeal and submits that the claimant was an unauthorised passenger in the Tractor-Trailer, violating the terms and conditions of the policy and, therefore, the Insurance Company is not liable to pay compensation. It is further submitted that the compensation awarded is also excessive.

4. The contention of the claimant is that he was a cleaner in the Tractor-Trailer and therefore, his claim is covered under the Employees' Compensation Act.

5. In order to appreciate the contentions raised, it is necessary to find out the reasons which propelled the claims Tribunal to pass an award against the Insurance Company.

6. The insurance company relies on the statement said to have been given by the claimant to the doctor that he fell down from the coconut tree and sustained injury; therefore, the claim petition is not maintainable. Though such a contention has been raised, however, the same has been rejected by the Tribunal for the reason that the Doctor who issued the Accident Register was not examined.

7. The Tribunal has further pointed out that the Investigating Police Officer has not been examined to prove the mode of accident and that the non-examination of owner and driver of the offending vehicle is also detrimental to the case of the appellant/insurance company. For the aforesaid reasons, the Tribunal rejected the contention of the insurer relating to liability.

8. Insofar as the capacity in which the claimant travelled in the vehicle is concerned, the Tribunal has taken note the evidence of P.W.1, who has claimed that he is a load man and he was accompanying the vehicle. The injured, P.W.1 has further deposed that he sustained fracture of bone in the right thigh. The Tribunal has given a finding that for a load man, fracture of bone in the right thigh would have a direct impact upon his ability to earn.

9. Dr.Gopalakrishnan, an Orthopaedic Surgeon in the Government General Hospital, has spoken about the disablement. He has spoken about the shortening of bone by 3/4th inches in the right thigh and has further deposed that there is restriction in the movement of right hip, difficulty in squatting and mal-union of the fractured bone. The doctor has assessed the disability at 20%. The Tribunal quantified the compensation as under :-

Monthly income has been taken at Rs.3,000/- p.m. Functional disability has been taken as equivalent of the physical disablement. Taking the age of the injured as 40 and fixing the multiplier of 16, taking the annual income at Rs.36,000/-, future loss of income for 20% disability has been calculated at Rs.1,15,200/-. Awarding Rs.5,000/- for extra nourishment and Rs.20,000/- towards pain and suffering, total award was quantified at Rs.1,70,200/-.

10. From a careful perusal of the evidence available on record as also the expert evidence by the doctor relating to the injuries suffered by the claimant and the findings arrived at by the Tribunal based on the evidence, this Court is of the considered opinion that the Tribunal has analysed the evidence in its proper perspective and has awarded just and reasonable compensation under each and every head and, therefore, it does not call for any interference.

11. In the result, the Civil Miscellaneous Appeal is dismissed, confirming the award dated 19.03.2010 passed in M.A.C.T.O.P.No.20 of 2008 by the Motor Accident Claims Tribunal (Additional District Judge), Karaikal. No costs. Consequently, connected miscellaneous petition is closed.

12. The Insurance Company is directed to deposit the entire amount of compensation, less the amount, if any, already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this Judgement. 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.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

ogy/GLN

To

1. The Motor Accident Claims Tribunal
   (Additional District Judge),
   Karaikal.

C.M.A.No.2260 of 2017

nr 10/04/2018