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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No. 604 of 2017

The New India Assurance Company Ltd.,
Office at No.46, Moore Street,
Chennai-600 001.

.. Appellant/2nd Respondent

Versus

1. R.Rajagopal

2. M.Mujubur Rahman .. Respondents/Petitioner/1st Respondent
(2nd respondent set exparte before the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 31.08.2006 made in MACT.O.P.No.148 of 2004 on the file of the Motor Accident Claims Tribunal, (Sub-Court), Poonamallee.

For appellant : Mr.S.Jayasankar

For Respondents: Batta Due reg R-1
R-2 - Exparte

J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal in M.C.O.P.No.,148 of 2004 dated 31.08.2004, the Insurance Company has preferred to file the above appeal.

2. The claimant, Rajagopal aged 58 years, a manufacturer of sweets and savouries, earning a sum of Rs. 7000/- per month, met with an accident on 11.12.2003 due to which, he sustained head injury and other grievous injuries. Hence, he filed a claim petition, in M.C.O.P.No.148 of 2004, seeking compensation for a sum of Rs.5,50,000- (Rupees Five Lakhs fifty Thousand Only).

3. The Claims Tribunal, on consideration of oral and documentary evidence has awarded a sum of Rs.2,12,230 /- (Rupees Two Lakh Twelve Thousand Only) as compensation. The break up details of the same are as follows:

Disablement
compensation - Rs.60,000/-



Transportation charges	-	Rs. 1,000/-
Nutrition	-	Rs. 2,000/-
Medical expenses	-	Rs. 49,230/-
Pain and sufferings	-	Rs. 50,000/-
Loss of earning capacity	-	Rs.1,00,000/-

		Rs.2,12,230/-

4. The learned counsel for the appellant submits that the compensation awarded by the Tribunal towards disablement compensation and loss of earning capacity are very high and the same needs to be reduced.

5. A perusal of the award passed by the Claims Tribunal reveals that P.W.2- the Doctor who examined the claimant, in his evidence has stated the claimant has sustained head injury and facial injuries and on account of head injury, the claimant suffers giddiness and head ache and therefore finds it difficult in eating the food and also suffered loss of memory. Apart from that the claimant also suffered dislocation in the teeth and also suffered nervous disorder. P.W.'s 2 and 3, the Doctors have assessed the disability of the claimant @ 35% & 45% respectively and issued Ex.P12 and Ex.P.14 -disability certificate in respect of orthopedical and neurological complaints. Though, the Doctors have assessed the disability @ 35% & 45% respectively, however, the Claims Tribunal, on consideration of oral and documentary evidence and taking into consideration the evidence of doctor that the injuries sustained by the claimant results in epilepsy, and other associated disorders has fixed the functional disability @ 60% and awarded a sum of Rs.60,000/- (60x1000) towards disablement compensation, by adopting percentage method and giving Rs.1,000/- per percentage of disability.

6. It is the contention of the learned counsel for the appellant that the Tribunal has awarded disablement compensation as well as loss of earning capacity at Rs.60,000/- and Rs.1,00,000/- respectively, which is impermissible. Though the contention advanced is justifiable, however, it is to be pointed out that the Tribunal has not awarded any compensation towards extra nourishment, loss of enjoyment of amenities and attendant charges. Taking into consideration the injuries suffered by the claimant and the treatment taken, this Court is of the considered view that compensation should have been awarded towards extra nourishment, loss of enjoyment of amenities and attendant charges. Accordingly, this Court, while negating the compensation awarded towards disablement compensation,



however, awards the amount of Rs.60,000/- towards loss of enjoyment of amenities, extra nourishment and attendant charges. The compensation awarded towards loss of earning capacity at Rs.1,00,000/- is confirmed.

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7. Further, the Tribunal, on the basis of Ex.P-9, Medical Bills awarded a sum of Rs.49,230/-, towards Medical expenses. A sum of Rs.1,000/- has been awarded towards Transportation and a sum of Rs.2,000/- has been awarded towards Extra Nourishment. The said compensation awarded above could only be said to be meagre and cannot be said to be unreasonable or excessive and, therefore, the same are confirmed.

8. On an overall consideration of the entire matter, this Court finds that the compensation awarded by the Tribunal cannot be said to be excessive or unreasonable and the same does not require any interference at the hands of this Court.

9. 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.148 of 2004 dated 31.08.2006. Consequently, connected Miscellaneous Petition is closed.

10. The appellant/insurance company is directed to deposit the entire award amount along with interest from the date of petition till date of deposit 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 V)

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Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal, (Sub-Court),
Poonamallee



2. The Section Officer, VR Section,
High Court, Madras.

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