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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A.[MD].No.1289 of 2014

and

M.P.(MD)No.1 of 2014

The Branch Manager,
The Oriental Insurance Company Limited,
Branch Office, EC. Paramathi Velur,
44/3, Thiruvalluvar Salai Opp.,
Ambika Complex,
Velur, Namakkal District. : Appellant/2nd Respondent

Vs.

1.G.Vinothkumar @ Ashwin Kumar ...1st Respondent /Petitioner

2.P.Murugan :II Respondent/1st Respondent

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.53/2013, dated 28.03.2014, on the file of the Motor Accidents Claims Tribunal -cum- Principal Subordinate Judge, Karur.

For Appellant : Mr.K.Bhaskaran

For Respondent No.1 : Mr.T.Selvakumaran

For Respondent No.2 : No Appearance

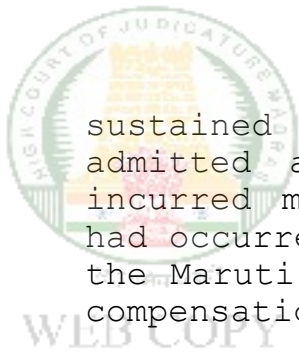
J U D G M E N T

[Judgment of the Court was delivered by R.SUBBIAH, J.]

Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal -cum- Principal Subordinate Judge, Karur, by award dated 28.03.2014 in M.C.O.P.No.53/2013, the appellant Insurance Company has filed the present appeal.

2. Since the present appeal has been filed only questioning the quantum of compensation awarded by the Tribunal, this Court is of the view that it is not necessary to traverse into the other aspects of the award.

3. So far as the quantum of compensation is concerned, it is the case of the first respondent/claimant before the Tribunal that on account of the accident that had occurred on 17.01.2013, he had



sustained multiple grievous injuries all over his body and he was admitted as an inpatient from 17.01.2013 to 30.01.2013 and he incurred medical expenditure of Rs.7,00,000/-. Since the accident had occurred only due to rash and negligent driving of the driver of the Maruti Omni van, he made a claim for a sum of Rs.20,00,000/- as compensation.

4. In order to prove the claim, on the side of the first respondent/claimant, the claimant himself was examined as P.W.1, besides examining two doctors as P.W.2 and P.W.3 and 16 documents were marked as Exs.P.1 to P.16. On the side of the appellant Insurance Company, three witnesses were examined as R.W.1 to R.W.3 and two documents were marked as Exs.R.1 and R.2.

5. The Tribunal, after considering the submissions made on either side and also after analyzing the entire evidence, has fixed the liability on the part of the owner of the insured vehicle as well as the Insurance Company. By coming to such conclusion, the Tribunal has calculated the compensation under different heads and passed an award for a total sum of Rs.17,72,700/-. The break up details of the amount awarded by the Tribunal are as follows:

Loss of earning power	: Rs. 7,48,800/-
Loss of future income	: Rs. 2,99,500/-
Pain and Suffering	: Rs. 50,000/-
Extra Nourishment	: Rs. 25,000/-
Transport Expenses	: Rs. 45,000/-
Medical Expenses	: Rs. 6,04,400/-

Total	Rs.17,72,700/-

6. The Tribunal has permitted the appellant Insurance Company to recover the compensation amount from the second respondent herein, the owner of the vehicle which caused the accident in question, after paying the same to the first respondent/claimant.

7. Aggrieved over the same, the present appeal has been filed by the Insurance Company.

8. We have heard the learned counsel for the appellant Insurance Company and the learned counsel for the first respondent.

9. The only submission made by the learned counsel for the appellant is that for the injury sustained by the first respondent, the amount awarded by the Tribunal under different heads is on the higher side and hence, the same needs proper reduction.

10. However, the learned counsel for the first respondent submitted that the amount awarded by the Tribunal under different heads is just and reasonable and hence, there is no need to reduce the same.



11. Keeping in mind the submissions made by the learned counsel on either side, we have carefully gone through the entire materials available on record.

12. On perusal of the evidence adduced on the side of the first respondent/claimant, more particularly from the evidence of P.W.2 and P.W.3, who are doctors by professions, it could be seen that the first respondent sustained fractures over his head, right mandible, right arm, right heel pad with lateral dislocation of right ankle and all the injuries are grievous in nature. Considering the nature of injuries sustained by the first respondent, we are of the opinion that the disability fixed by the Tribunal as 65% cannot be said to be on the higher side. The Tribunal, by considering the avocation of the first respondent as Cook, fixed a sum of Rs.6,000/- as monthly income and by applying the multiplier '16', based on the age of the victim, awarded a sum of Rs.7,48,800/- as loss of earning power. Since the said calculation was made by the Tribunal as per the principle laid down by the Hon'ble Supreme Court as well as this Court, we do not find any infirmity with the same. That apart, the Tribunal awarded a sum of Rs.2,99,500/- under the head of loss of future income, which, in our considered view, appears to be on the higher side. Hence, the same needs to be reduced and accordingly, it is reduced to Rs.2,00,000/-. Except this, the amount awarded by the Tribunal under the other heads is confirmed. The finding of the Tribunal with regard to pay and recovery is also confirmed.

13. To sum up, the compensation of Rs.17,72,700/- awarded by the Tribunal is reduced to Rs.16,73,200/- as under:

Loss of earning power	: Rs. 7,48,800/-
Loss of future income	: Rs. 2,00,000/-
Pain and Suffering	: Rs. 50,000/-
Extra Nourishment	: Rs. 25,000/-
Transport Expenses	: Rs. 45,000/-
Medical Expenses	: Rs. 6,04,400/-

Total	Rs.16,73,200/-

14. In fine, the Civil Miscellaneous Appeal is allowed in part in the following terms:-

(i) The Award of the Tribunal is reduced to Rs.16,73,200/- from Rs.17,72,700/-.

(ii) The appellant / Insurance Company is directed to deposit the entire award amount, as modified above, with 7.5% interest per annum from the date of petition till the date of deposit, less the amount already deposited, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the first respondent/claimant is permitted to withdraw the entire amount, less the amount already withdrawn, with proportionate interest and costs.



(iv) In all other aspects, the award of the Tribunal is confirmed.

(v) There will be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(c)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Motor Accidents Claims Tribunal -cum-
Principal Subordinate Judge,
Karur.

+1 cc to Mr. T.SELVA KUMARAN, Advocate, Sr.No: 7174

+1 cc to Mr. K.BHASKARAN, Advocate, Sr.No: 6972

SML

MAS-SM/RSK/SAR2;22.02.2017:4P/4C

Judgment made in
C.M.A.[MD].No.1289 of 2014
Dated: 08.02.2017