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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.132 of 2015
and
M.P. (MD) .No.1 of 2015

The Divisional Manager,
United Insurance Company Limited,
No.61/2694, 1st Floor,
Indian Bank Upstairs,
Theirkku Vethi, Thanjavur.

... Appellant/2nd Respondent

Vs.

1.Velumani
2.Leema Rose

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

(R2 set exparte in Tribunal: Notice dispensed with)

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.334 of 2012, dated 09.04.2014 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Thanjavur.

For Appellant : Mr.J.S.Murali

For Respondents : Mr.M.Karunanithi for R.1
R.2-Exparte

JUDGMENT

United Insurance Company Limited has filed this appeal, challenging the award dated 09.04.2014 made in M.C.O.P.No.334 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Thanjavur.

2.The first respondent herein is the claimant. He was riding his two-wheeler on 17.01.2012 when the auto belonging to the second respondent herein came from the opposite direction and dashed against the claimant. The claimant suffered injuries. The Tribunal fixed the compensation payable to the claimant at Rs.2,56,800/- with



interest. Contending that excessive compensation has been awarded, this appeal has been filed.

3. Heard the learned counsel for the parties.

4. The learned counsel appearing for the claimant would contend that the award passed by the Tribunal is very much sustainable. The Tribunal took note of the evidence on record including the FIR in Crime No.11 of 2012 on the file of Nadu Cauveri Police Station fixed the negligence on the driver employed by the second respondent herein. The said finding does not call for any interference. Similarly the liability was rightly fixed on the appellant Insurer. There is no other dispute regarding the liability. What is under question is the quantum of compensation alone. The claimant examined Dr.V.Jayabalan as P.W.2 and marked Ex.P4 Wound Certificate and Ex.P13 Disability Certificate. The doctor has assessed the disability at 28%. It is also permanent in nature. The Tribunal fixed the monthly income at Rs.4,500/- and proceeded to adopt multiplier method. It is this approach that is seriously questioned by the learned counsel for the appellant.

5. The learned counsel for the appellant would draw my attention to the Schedule 1 and 2 of Employees Compensation Act, 1923. If the whole of little finger is lost, the percentage of loss of earning capacity is fixed at 7%. Therefore, in this case, the Tribunal seriously erred in proceeding on the premise that there has been functional disability. The disability in this case is permanent in nature. But there is no basis for assessing it at 28%. Therefore, the award passed by the Tribunal has to be necessarily interfered with. The compensation payable to the claimant therefore has to be reworked as under;-

Sl.No.	Heads	Amount in Rs.
1.	Disability	Rs. 75,000/-
2.	Pain and Suffering	Rs. 35,000/-
3.	Transport Expenses	Rs. 5,000/-
4.	Extra Nourishment	Rs. 10,000/-
	Total=	Rs.1,25,000/-

6. The first respondent is therefore entitled to a sum of Rs.1,25,000/-. The appellant is directed to deposit the said amount with interest at the rate of 7.5% per annum within twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any to the credit of M.C.O.P.No.334 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Thanjavur. On such deposit, the claimant is permitted to withdraw the same by filing proper application before the Tribunal. The Insurance Company is permitted to withdraw the balance amount if any. The award passed by the Tribunal is accordingly modified. This



Civil Miscellaneous Appeal is partly allowed. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.J.S.MURALI, ADVOCATE IN SR No. 83452

TSG

TE/KP/SAR-III : 16/11/2017 : 3P/4C

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