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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

C.M.A.No.190 of 2006

and

C.M.P.No.620 of 2006

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
46, Whites Road,
Chennai - 600 014. ... Appellant/4th Respondent

Versus

1.Panjamurthy ...1st Respondent/Petitioner
2.Suresh

3.The United India Insurance Co.Ltd.,
No.13-A, Nethaji Road, Manjakuppam,
Cuddalore - 1.

4.M/s.Mohan Breweries & Distilleries Ltd.,
No.4/76-E, Sasthri Nagar,
Salem - 4. ... 2 to 3 Respondents/1 to 3 Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173(1) of Motor Vehicles Act, 1988, against the Judgment and Decree dated 02.08.2005 made in M.C.O.P.No.1877 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Cuddalore.

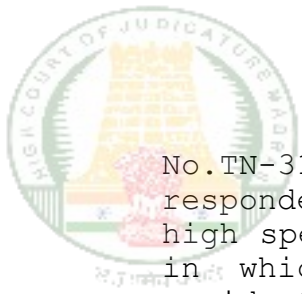
For Appellant : Mr.M.B.Gopalan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 02.08.2005 made in M.C.O.P.No.1877 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal Sub Court), Cuddalore.

2. The brief facts of the case are as follows :-

On 13.08.2003 at about 1.00 p.m., when the claimant was travelling in the first respondent bus bearing Registration



No.TN-31-M-6390 at Vridhachalam-Cuddalore Main Road, the third respondent vehicle, came in the opposite direction in a very high speed, in a rash and negligent manner, hit against the bus, in which, the claimant was travelling bus and caused the accident. Due to the accident, the claimant sustained severe injuries and he underwent treatment in the Government Hospital and Private Hospital and inspite of the treatment he sustained disability. The claimant has claimed a sum of Rs.5,00,000/- as compensation.

3. The Insurance Company, in the counter statement, has denied the accident and further stated that the claimant was strictly called upon to prove the allegation. The averment made by the appellant/4th respondent Insurance Company is that the accident occurred due to the rash and negligent driving of the driver of first respondent bus and the third respondent's driver could not avoid the accident inspite of his best efforts. The other averment is also made with regard to the claim made by the claimant's age, occupation, loss of income and monthly income of the claimant.

4. The Tribunal, after analyzing the evidence and documents placed before it, has taken the disability at 35%. The Tribunal has taken the annual loss of income at Rs.12,600/- and by applying the multiplier, the sum arrived at Rs.2,26,800/-. The Tribunal has awarded a sum of Rs.2,57,800/- as compensation under the following heads :

Head	Amount awarded by the Tribunal (Rs.)
For Loss of income (Rs.3000*35%=1050) (Rs.1,050*12*18)	2,26,800.00
For Pain and Suffering	20,000.00
For Nourishment	10,000.00
For Transport Expenses	1,000.00
Total Compensation	2,57,800.00

Aggrieved against the said award, the appellant/4th respondent Insurance Company has preferred this appeal.

5. In the grounds of appeal, it has been stated that the sum awarded by the Tribunal is highly excessive when there is only a fracture of the right hand. Further, the sum awarded for loss of income by applying multiplier is also not justified. The disability assessed by the Doctor at 35% is highly exaggerated and there is no record to prove the same before the Tribunal.



The Accident Register has been filed and there is no discharge summary filed before the Tribunal. Hence, the sum arrived at by the Tribunal, in the absence of relevant documents and evidence for simple fracture is not justified.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On perusal of the records, it is seen that the claimant sustained injuries because of the accident. To prove the said fact, Ex.P5-Accident Register was placed before the Tribunal. Further the document viz., Ex.P6-Wound Certificate was filed through P.W.2-Doctor, who has deposed that the claimant sustained fracture in the radius bone and that even after the treatment, his movement in the right hand wrist is very much reduced and he is unable to attend his daily routines, he needs assistance. He has also assessed the disability at 35%. The other aspect regarding the occupation of the claimant was not disputed by the appellant/Insurance Company. Though, the Accident Register, disability certificate and the X-ray were filed on the side of the claimant to substantiate his claim that he was under treatment for a long time, the nature of injury and period of treatment has not been clearly proved before the Tribunal by filing the discharge summary.

8. The arguments advanced by the appellant/Insurance Company is that only a fracture in the radius bone is reported and therefore, the assessment by the Doctor is excessive and further adopting the multiplier method is also not justified. Hence, the main argument advanced by the appellant/Insurance Company is only on that aspect.

9. On perusal of the records, it is seen that there are no documents filed on the side of the claimant apart from the Accident Register. Hence, those documents, which are necessary to prove the disability having not been filed, this Court is of the view that the finding of the Tribunal, taking disability at 35% is excessive and applying the multiplier is also not proper. Hence, the disability has to be taken at 15%, accordingly the loss of income has been calculated at Rs.97,200/-. Since, the sum awarded by the tribunal for pain and suffering, nourishment and transport expenses are quite proper and reasonable, this Court does not want to interfere with the said amount. The sum awarded by the tribunal is modified by this Court is as follows:



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Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
For Loss of income	2,26,800.00	97,200.00
For Pain and Suffering	20,000.00	20,000.00
For Nourishment	10,000.00	10,000.00
For Transport Expenses	1,000.00	1,000.00
Total Compensation	2,57,800.00	1,28,200.00

10. In view of the said modification, the award of Rs.2,57,800/- granted by the Tribunal in MCOP. No.1877 of 2003 is reduced to Rs.1,28,200/-. The said amount shall carry the same rate of interest as awarded by the Tribunal.

11. In view of the above, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12. Accordingly, the appellant/Insurance Company is directed to deposit the entire modified award amount, in respect of above Appeal as per the order of this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, 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 to the claimant's bank account through RTGS within one week thereon.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(Principal Subordinate Judge), Cuddalore.



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

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+1cc to M/s.M.B.Gopalan, Advocate Sr.69825

C.M.A.No.190 of 2006
and
C.M.P.No.620 of 2006

cp[co]
srg 06/11/2019