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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1065 of 2010
and M.P.No.1 of 2010
and Cross Objection No.70 OF 2012

ICICI Lombard General Insurance Company Ltd.,
ICICI Bank,
Opp. Telephone Exchange,
Erode.

...Appellant in CMA.No.1065 of 2010/
1st respondent in Cross Obj.70 of 2012

Vs

1.Ramesh ... 1st Respondent in CMA.No.1065 of 2010/
Cross Objector in Cross Objection No.70 of 2012

2.Eswaran

3.C.Vajravel

[R2 & R3 set Exparte in the Lower Court] .Respondents 2 and 3 in
C.M.A.No.1065 of 2010 and
Cross Objection 70 of 2012

PRAYER in C.M.A.No.1065 of 2010: Civil Miscellaneous Appeal
filed under Section 173 of Motor Vehicles Act, 1988, against the
Judgment and Decree dated 06.08.2009 made in O.P.No.568 of 2008
on the file of the Motor Accident Claims Tribunal (Principal
Dist. Judge) at Tiruppur.

Prayer in Cross Objections No.70 of 2012: Cross Objection filed
under Or.41, Rule 22 of CPC against Decree and Judgment in
M.C.O.P.No.568 of 2008 dated 06.08.2009 on the file of
MACT/Principal Sub Court, Tiruppur.

For Appellant in C.M.A.No.1065
of 2010 & 1st respondent in Cross : Ms.R.Sreevidhya
Objection No.70 of 2012



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For 1st respondent in C.M.A.No.1065
of 2010 & Cross Objector in
Cross Objection No.70 of 2012 : Mr.Ma.P.Thangavel

: R2 & R3 - Exparte

COMMON JUDGMENT

The instant appeal has been filed by the Insurance Company challenging the award dated 06.08.2009 passed by the Motor Accident Claims Tribunal (Principal District Judge) at Tiruppur, in M.C.O.P.No.568 of 2008.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The first respondent sustained injuries as a result of an accident that took place on 01.05.2008 caused by a Mini Door Auto bearing registration No.TN-33-U-7357 owned by the second respondent and insured with the appellant.

(ii)The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.568 of 2008, seeking a compensation of Rs.8,00,000/- (Rupees eight lakhs only)

(iii)The Motor Accident Claims Tribunal, by its award dated 06.08.2009 in M.C.O.P.No.568 of 2008, directed the appellant to pay the first respondent, a sum of Rs.2,63,500/- (Rupees two lakhs sixty three thousand and five hundred only) together with interest at the rate of 7.5% per annum from the date of claim, till the date of realization.

3. Aggrieved by the award dated 06.08.2009 in M.C.O.P.No.568 of 2008 passed by the Motor Accident Claims Tribunal, the instant appeal has been filed by the Insurance Company.

4. Heard, Ms.R.Sreevidhya, learned Counsel for the appellant-Insurance Company and Mr.Ma.P.Thangavel, learned Counsel for the first respondent.

5. According to the learned counsel for the appellant, the disability of the first respondent was not assessed by the Tribunal in accordance with Schedule-I of Workmen Compensation Act and the Doctor, who had issued the disability certificate, had not treated the first respondent at any point of time. According to her, the Tribunal has also erred in awarding the compensation to the first respondent by applying the multiplier method.



6. Per contra, the learned Counsel for the first respondent would submit that the injuries sustained by the first respondent as a result of the accident is grievous in nature. According to him, the first respondent has suffered multiple fractures and he was only 44 years at the time of the accident and he was doing work as an Iron master. According to him, considering the nature of injuries sustained by the first respondent and his avocation and as well as his age, the compensation awarded by the Tribunal under the impugned award is a just compensation.

7. This Court after having considered the materials available on record and after examining the impugned award and after hearing the submissions of the respective counsels observes the following:

(a) The nature of injuries sustained by the first respondent has not been disputed by the appellant before the Tribunal.

(b) The age and avocation of the first respondent has also not been disputed by the appellant before the Tribunal.

(c) The disability sustained by the first respondent is 38% as per the disability certificate Ex.P.9 marked before the Tribunal. But, the Tribunal has assessed the disability only at 33%.

(d) The Tribunal has awarded a sum of Rs.2,37,600/- towards loss of earning, Rs.15,000/- towards pain and suffering, Rs.2,000/- towards extra nourishment charges, Rs.1,000/- towards transportation cost, Rs.5,000/- towards loss of amenities and Rs.2,900/- towards reimbursement of medical expenses in all a total compensation of Rs.2,63,500/- has been awarded to the first respondent. Considering the nature of the injuries sustained by the first respondent, his age and his avocation, this Court is of the considered view that the compensation awarded to the first respondent by the Tribunal is a just compensation.

8. In the light of the above observations, this Court is of the considered view that there is no merit in the instant appeal. Accordingly, the appeal is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

9. The first respondent has also filed a cross objection, namely, Cros.Obj.No.70 of 2012 seeking enhancement of compensation.



10. This Court does not find any merit in the cross objection filed by the first respondent, in view of the above observations made by this Court. Accordingly, the Cross Objection No.70 of 2012 is also dismissed.

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11. It is also represented by the learned counsel appearing on both sides that the Insurance Company has already deposited the compensation awarded by the Tribunal and the first respondent in the instant appeal has withdrawn the amounts lying to the credit of the M.C.O.P before the Tribunal.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Principal Dist. Judge,
Tiruppur.

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

+1cc to Mr.R.Sree Vidhya, Advocate, S.R.No.67131

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.66558

C.M.A.No.1065 of 2010
AND
M.P.No.1 of 2011

JP (CO)
GSP (23/11/2018)