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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2036 of 2011

M/s.Royal Sundaram Alliance Insurance Co. Ltd.
Sundaram Towers,
No.45 & 46,Whites Road,
Chennai-600 014.

...Appellant/2nd Respondent

Vs

1.J.Jayavel ... 1st Respondent/Petitioner
2.K.B.Selvakumar
(2nd respondent ex parte in Lower Court
And hence notice may be dispensed with)
...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.1247 of 2008 dated 11.03.2011, on the file of the Motor Accidents Claims Tribunal, V Court of Small Causes Chennai.

For Appellant : Mr.N.Vijayaraghavan

For Respondent : Mr.P.R.Ajaykumar for R1
Exparte for R2

JUDGMENT

The instant appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (Vth Court of Small Causes Chennai) in M.C.O.P.No.1247 of 2008 under its Award dated 11.03.2011.

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

2. The first respondent sustained grievous injuries as a result of an accident that took place on 08.03.2008 caused by a Minidor Auto bearing registration No.TN 21 F 1679 owned by the second respondent and insured with the Appellant. The first respondent preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.1247 of 2008 seeking a compensation of Rs.8,00,000/-. The Motor Accident Claims Tribunal by its Award dated 11.03.2011 in M.C.O.P.No.1247 of 2008, directed the



Appellant to pay the first respondent a sum of Rs.7,35,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realization.

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3. Aggrieved by the Award dated 11.03.2011 in M.C.O.P.No.1247 of 2008 passed by the Motor Accident Claims Tribunal, the instant appeal has been filed by the insurance company challenging the quantum of compensation awarded to the first respondent.

4. Heard, Mr.N.Vijayaraghavan learned Counsel for the Appellant and Mr.P.R.Ajaykumar, learned Counsel for the first respondent. The second respondent who is the owner of the subject vehicle has remained ex parte before the Tribunal as well as before this Court.

5. According to the learned Counsel for the Appellant, the Tribunal has erroneously applied multiplier method in assessing the quantum of compensation payable to the first respondent. According to the learned counsel for the Appellant, no proof for loss of income on permanent basis was produced by the first respondent before the Tribunal. The learned counsel for the Appellant would further contend that the Tribunal has erred in granting Rs.1,00,000/- for future medical expenses without any evidence placed by the first respondent before the Tribunal.

6. Per contra, the learned Counsel for the first respondent would submit that the Appellant has sustained grievous injuries namely fracture in the Right leg knee (fixation of wires & Screws), Neck of right femur (Fixation of lag Screws), Right Hip dislocation and multiple injuries all over the body, at the time of the accident. According to the learned Counsel for the first respondent, at the time of accident, the first respondent was an Accounts Assistant in a private concern and earning a monthly income of Rs.7,300/- and the salary certificate was also marked as Ex.P9 before the Tribunal. The learned counsel for the first respondent would further contend that loss of salary proof Ex.P10 was also filed before the Tribunal.

7. Considering the nature of injuries sustained by the first respondent and his age as well as his avocation at the time of accident, the learned counsel for the first respondent would contend that the compensation awarded under the impugned award is a just compensation.



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8. 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 and after personally seeing the first respondent/claimant in open Court, observes the following:

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

(b) The first respondent has also produced his salary certificate which was marked as Ex.P9 and loss of salary proof which was marked as Ex.P10 and copy of Attendance Register which was marked as Ex.p11 before the Tribunal.

(c) The Appellant has also not disputed before the Tribunal that the first respondent was an accounts assistant and earning a monthly salary of Rs.7,300/- at the time of accident.

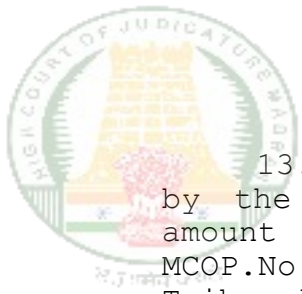
(d) As directed by this Court, the learned counsel for the first respondent has produced the first respondent before this Court today. The first respondent was able to come to the Court only with the help of crutches. On personally seeing the first respondent, this Court is of the considered view that the first respondent has suffered grievous injuries which is certainly resulted in the loss of hearing capacity.

(e) At the prime age of 33 years, he has sustained this serious injuries which resulted in his immobility.

(f) Considering the above circumstances, this Court is of the considered view that the Tribunal has rightly applied the multiplier method in assessing the compensation payable to the first respondent. (g) The Tribunal has also rightly awarded compensation of Rs.1,00,000/- towards future medical expenses, Rs.73,000/- towards loss of earning, Rs.20,000/- towards pain and suffering and Rs.87,163/- towards reimbursement of medical bills as per Ex.p7.

(h) In fact, today in the open Court, the learned counsel for the first respondent has produced a Doctor's report dated 23.09.2018 which reveals that further surgeries will have to be performed on the first respondent, for which, the cost would be Rs.5,00,000/-. Even though the said letter dated 23.09.2018 is not part of the records available before the Tribunal, in order to assess the just compensation to the first respondent for which he is entitled to, this letter is also taken into consideration by this Court in this appeal.

9. 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 without costs.



13. The Appellant is directed to deposit the amount awarded by the Tribunal together with interest, after deducting the amount that has already been deposited, to the credit of MCOP.No.1247 of 2008 on the file of the Motor Accident Claims Tribunal, Vth Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the first respondent is permitted to withdraw the amount together with accrued interest lying to the credit of MCOP.No.1247 of 2008 on the file of the Motor Accident Claims Tribunal, Vth Court of Small Causes, Chennai by filing an appropriate application.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Vth Judge, Court of Small Causes, Chennai.

2.The Section Officer,
Vernacular Section,
Madras High Court(2 copies)

+1cc Mr.M.B.Gopalan, Advocate sr.no.67587

C.M.A.No.2036 of 2011

nr 29/11/2018