IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
C.M.A.No.1109 of 2008
and M.P.No.1 of 2008

United India Insurance Co.Ltd.,
P.B.No.1122, T.B.Road,
R.S.Puram, Coimbatore ... Appellant/2nd Respondent

Vs

1. T.Udayaraj
2. Dinesh Albertson ... Respondents/Petitioner/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 06.09.2007 made in M.C.O.P.No.482 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge & Fast Track Court III), Coimbatore.

For Appellant : Mr.T.Ravichandran
For Respondents : Mr.S.S.Swaminathan for R1
R2 set exparte

J U D G M E N T

Aggrieved over the award passed by the Motor Accident Claims Tribunal, (Additional District Judge & Fast Track Court III), Coimbatore, in MCOP. No. 482 of 2006 dated 06.09.2007, the appellant herein, who is the second respondent in the above said MCOP, has filed this Appeal.

2. Heard the learned counsel for the appellant and the learned counsel for the first respondent.

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

The case of the first respondent/claimant is that on 23.12.2004 at about 4:00 p.m. he sustained injuries due to the rash and negligent driving of the rider of the vehicle bearing Reg.No.TN -37-AH-6342 insured with the appellant herein. Due to the injuries suffered by the first respondent, he made a claim against the appellant herein before the Tribunal for a sum of Rs.17,75,000/- which was restricted to Rs.10,00,000/-. The Motor Accident Claims Tribunal by its judgment and decree dated 06.09.2007 after considering the materials available on record and submissions of the respective parties has passed an award directing the appellant herein to pay a sum of

Rs.10,00,000/- to the first respondent together with interest at 7.5% per annum from the date of claim till the date of realisation.

4. Aggrieved by the award dated 06.09.2007 passed by the Motor Accident Claims Tribunal, the instant appeal has been filed by the appellant/Insurance Company.

5. According to the learned counsel for the appellant/Insurance Company, the compensation awarded to the first respondent is high and not in accordance with the settled principles of law. Further he submitted that a sum of Rs.9,75,000/- was awarded to the first respondent towards "loss of income" is not in accordance with the income which the first respondent was earning at the time of accident. The learned counsel also submitted that the compensation awarded under the heads "Pain and Suffering", "Nutrition", "Attender expenses" and "Medical Expenses" is also not commensurate with the actual loss suffered by the first respondent as a result of the accident.

6. Per contra the learned counsel for the first respondent submitted that the first respondent is a qualified Chartered Accountant and has filed all the documents to prove his earning capacity before the Tribunal. Income tax returns for the year 2003 & 2004 marked as Ex.P.9 and disability certificate was marked as Ex.P.15 before the Tribunal which clearly establish that the Tribunal has rightly awarded the compensation in favour of the first respondent. Further he submitted that even though the Tribunal assessed the compensation at Rs.12,80,276/- but it has been restricted to Rs.10,00,000/-, having given a finding based on the documents filed in support of the claim that the first respondent is entitled to a much higher compensation than what was finally awarded. According to the learned counsel for the first respondent no interference is called for in this appeal.

7. After considering the materials available on record, examining the impugned award and hearing the submissions of the respective counsels, this Court observes the following:-

a. It is an admitted fact that the first respondent is a qualified Chartered Accountant. No contra evidence has been placed by the appellant/Insurance Company before the Tribunal to disprove the claim of the first respondent that he is not a qualified Chartered Accountant. Age of the first respondent was 47 years which is also not disproved by the appellant/Insurance company before the Tribunal.

b. Even though the first respondent has filed his income tax return to establish that he was earning income of Rs.2,80,732/- per annum, the Tribunal based on Ex.P.14 has awarded Rs.2,50,000/- as the actual annual income of the first respondent.

8. In so far as the loss of future earning capacity is concerned, the Tribunal has awarded Rs.9,75,000/- by considering 30% as disability. The contention of the appellant/Insurance Company is that the injuries sustained by the first respondent on the left eye periorbital oedema, Skull fracture, Laceration of 4 x 1 cm over the left parietal region and blood injuries all over the body, would not affect his day today work and that the 30% disability shall be reduced to 15%.

9. This Court is of the considered view that taking into consideration the injuries suffered by the first respondent would not affect his day today work, this Court reduced the disability for the first respondent as 15% from 30% as awarded by the Tribunal. Therefore under the head loss of future earning capacity, the first respondent is entitled only to a sum of Rs.4,87,500/- =(2,50,000x13x15%/100) and not Rs.9,75,000/- as awarded by the Tribunal.

10. The Tribunal awarded a sum of Rs.2,60,276/- towards ''medical expenses''. This Court is of the considered view that the said amount awarded is just and proper. The Tribunal has awarded a sum of Rs.20,000/- towards ''Pain and Suffering''. This Court after considering the nature of injuries suffered by the first respondent reduces it to Rs.15,000/-. The Tribunal has awarded Rs.2,000/- towards ''Nutrition" and the same is enhanced to Rs.6,000/-. The Tribunal has awarded Rs.8,000/- under the head ''Attendar expenses" and the same is enhanced to Rs.10,000/-. Since no amount was awarded under the heads ''Loss of Amenities" and ''Transport expenses", this Court is inclined to award Rs.15,000/- and Rs.6,000/- respectively. The Tribunal awarded Rs.15,000/- towards ''Mental agony''. Since the first respondent has not suffered any mental agony on account of the accidnet and also compensation has been awarded under various other heads, this Court sets aside the sum of Rs.15,000/- awareded towards ''Mental agony''.

11. Hence the total compensation payable to the claimant is detailed hereunder.

Head	Amount (Rs.)
Loss of income	Rs.4,87,500/-
Medical expenses	Rs.2,60,276/-
Transportation charges	Rs.6,000/-
Attendar charges	Rs.10,000/-
Loss of amenities	Rs.15,000/-
Pain and suffering	Rs.15,000/-
Nutrition	Rs.6,000/-
Total	Rs.7,99,776

12. The Appellant is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the first respondent is permitted to withdraw the said sum by filing an appropriate application.

13. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.10,00,000/- is reduced to Rs.7,99,776/- and the Appellant is directed to pay the first respondent the sum of Rs.7,99,776/- together with interest at 7.5% per annum from the date of claim till date of realisation and also pay a sum of Rs.26,382/- towards cost as awarded by the Tribunal under the impugned award dated 06.09.2007. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dpq

To
The Motor Accident Claims Tribunal
(Addl. District Judge & Fast Track Court III),
Coimbatore.

+1cc to Mr.T.Ravi Chandran, Advocate SR.NO.56342
+1cc to MR.S.S.Swaminathan, Advocate SR.NO.56482

RJ(CO)
sm:24.9.2018