



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CMA(MD).No. 1528 of 2011

and

M.P(MD).No.1 of 2011

The Branch Manager,
United India Insurance Company Limited,
II nd Floor, Xavier Buildings,
PWD Road,
Nagercoil-09.

: Appellant / 1st respondent

Vs.

1.Mohamed Saffiq

: 1st respondent/Petitioner

2.Anitha

: 2nd respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decreetal award dated 17.05.2011 passed in M.C.O.P.No.159 of 2010 on the file of the Motor Accidents Claims Tribunal /Chief Judicial Magistrate Court, Tirunelveli.

For Appellant : Mr.A.S.Mathialagan
For Respondents : No appearance for R-1
Batta due for R-2

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award and decreetal award dated 17.05.2011 passed in M.C.O.P.No.159 of 2010 by the Motor Accidents Claims Tribunal /Chief Judicial Magistrate Court, Tirunelveli.

2.The appellant / Insurance Company is the 2nd respondent in M.C.O.P.No.159 of 2010 on the file of the Motor Accidents Claims Tribunal /Chief Judicial Magistrate Court, Tirunelveli. The first respondent herein filed a claim petition claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that occurred on 03.05.2009, caused by the second respondent's vehicle driver. Appellant is the insurer of the said vehicle.

3.The Tribunal, considering the pleadings oral and documentary evidence let in by the parties, held that the accident occurred only due to negligence on the part of the driver of the



second respondent and awarded a sum of Rs.8,44,620/- as compensation.

4.The Insurance Company has come out with the present appeal against the fixation of negligence on the part of the second respondent and the quantum of compensation awarded.

5.I have heard the learned counsel appearing for the appellant and perused the materials available on record. Though the first respondent entered appearance through counsel, there is no representation. For the second respondent, batta is due as on date.

6.According to the first respondent, the driver of the second respondent, suddenly turned the car towards right side and due to the same, the accident occurred and the first respondent sustained multiple injuries. The first respondent as P.W.1 has spoken to the manner in which the accident has occurred, as averred in the claim petition. First Information Report is lodged against the driver of the second respondent on the same ground as that of claim petition. The second respondent/appellant has not let in any oral and documentary evidence to disprove the contention of the first respondent. In view of such failure, to prove the contention of the learned counsel appearing for the appellant that the first respondent drove his vehicle in rash and negligent manner and dashed against the car belonging to the second respondent causing dent to the car as well as injuries to driver, there is no evidence on record, let in by the appellant/second respondent to substantiate this claim.

7.Considering all the materials on record, this Court is of the view that the finding of the Tribunal that the accident occurred only due to the negligence on the part of the driver of the second respondent is not perverse, warranting interference by this Court.

8.As far as the quantum of compensation is concerned, one doctor was examined as P.W.2 to prove the nature of the injuries and disability and the first respondent also filed documents towards transport and medical expenses. P.W.2, doctor, considering the nature of injuries sustained by the first respondent, stated that the first respondent suffered 90% permanent disability. There is no contra evidence let in by the appellant and second respondent. P.W.2-doctor has deposed that upper hand of the first respondent has lost sensitivity and the first respondent cannot use his left hand. Considering the evidence of P.W.2 and documents filed, the Tribunal applied multiplier method to arrive at compensation towards permanent disability. Notional income of Rs.3,000/- fixed by the tribunal and the multiplier applied are proper and the amounts awarded by the Tribunal are confirmed. As far as the medical expenses and transport expenses are concerned, the Tribunal has awarded only based on the bills produced by the first respondent. The amounts awarded for pain and suffering are just and proper. Hence, there is no reason either to modify or set aside the award of the Tribunal.



9. In the result, this Civil Miscellaneous Appeal is dismissed, by confirming the award and decretal award dated 17.05.2011 passed in M.C.O.P.No.159 of 2010 by the Motor Accidents Claims Tribunal /Chief Judicial Magistrate Court, Tirunelveli. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Chief Judicial Magistrate ,
Motor Accidents Claims Tribunal,
Tirunelveli
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.A.S.Mathialagan, Advocate, SR.No.89483

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09.10.2018

VS
ES/PM/SAR 4/31.10.2018/3P/5C