IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1568 of 2003
and C.M.P.No.10168 of 2003
and
Cros.Obj.No.2 of 2004

United India Insurance Co.Ltd.,
rep.by its Divisional Manager,
Divisional Office 2,
104 A, Peramanur Main Road ... Appellant in CMA /and
Salem-7. 1st respondent in Cros.Obj./II Respondent in MCOP

Vs

Samiappan ... 1st respondent in CMA and Cross Objector/Claimant in MCOP

S.Rajalakshmi
(2nd respondent ex-parte before the Lower Court). ... 2nd respondent in both the CMA and Cross.Obj./I Respondent in MCOP

Both the Appeal under Section 173 of the Motor Vehicles Act and Cross Objection under Order 41 Rule 22 of the Code of Civil Procedure filed against the judgment and decree dated 11.10.2002 made in MCOP No.250 of 1999 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri.

For Appellant in CMA and 1st respondent in Cross Obj. : Mr.N.Vijayaraghavan

For 1st respondent in CMA and Cross Objector : Mr.N.Manokaran

JUDGMENT

The above Civil Miscellaneous Appeal and the Cross Objection have been preferred by the Insurance Company and the Cross Objector / claimant, respectively, against the award of a sum of Rs.3,53,000/- towards compensation to the claimant, due to the injuries suffered by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 06.10.1998, at about 12.00 noon, the first respondent / claimant was proceeding towards Poosaripatty in the Salem - Dharmapuri Main Road in his bicycle to buy urea for his paddy field. When he reached near Pannapatty Pirivu Road, a tempo van bearing Reg.No.TN-27-J-2652 owned by the second respondent herein and insured with the appellant Insurance Company, came from the same direction rashly and negligently and dashed against the bicycle, which the claimant was riding. Due to the said impact, the claimant fell down from the bicycle and the tempo van ran over his legs, causing grievous injuries all over his body. Thereafter, he was admitted in the hospital and only after 20 days, he was able to regain things slowly. The claimant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.3,53,000/- with interest at the rate of 9% per annum from the date of petition.

3.Challenging the same, the appellant/Insurance Company has filed the Civil Miscellaneous Appeal and the claimant has filed the Cross Objection.

4.The learned counsel for the appellant Insurance Company has disputed only the quantum of compensation awarded by the Tribunal. He submitted that the compensation awarded by the Tribunal under various heads are excessive and exorbitant.

5.The learned counsel for the first respondent in the CMA / Cross Objector, has submitted that due to the accident, the claimant sustained grievous injuries, due to which he cannot walk, sit and do any work; that the claimant is not in a position to lead better marital life; that he is not even in a position to attend natural calls; that he is not in a position to walk continuously for 10 or 15 feet. He submitted that two doctors have been examined as P.W.2 and P.W.3, who have deposed that the condition of the victim is very worst. He also submitted that the victim was taking treatment as in-patient for 37 days and spent more than Rs.1,50,000/- towards medical expenses. The disability certificate marked as Ex.P13 and the certificate given by the Eye Doctor marked as Ex.P17 would show that the claimant lost his eye sight, loss of strength in the hands and legs and sustained severe injuries all over the body. In these circumstances, the Tribunal ought to have awarded a sum of Rs.5,00,000/- as total compensation, but it has awarded only a sum of Rs.3,53,000/- and hence the same has to be enhanced, according to the submission of the learned counsel for the first respondent in the CMA / Cross Objector.

6.Heard the learned counsel for the appellant Insurance Company and the learned counsel for the first respondent / claimant / Cross Objector, and perused the materials available on record carefully and meticulously.

7.The learned counsel for the appellant Insurance Company has not disputed the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the tempo van and hence the said finding of the Tribunal, need not be interfered with by this Court.

8.With regard to the quantum of compensation awarded by the Tribunal, based upon Ex.P9-Medical Bills, the Tribunal has awarded a sum of Rs.80,000/- towards medical expenses. It is an actual expenditure and hence the same is confirmed. Ex.P15 is the Scan Report. Ex.P16 is the Electro Cardiogram Report. Ex.P17 is the Certificate given by the Eye Doctor. Ex.P18 is the receipt for Lab expenses. Ex.P19 is the bill for having taken scan. A perusal of the same revealed that the claimant suffered 50% loss in intelligence / thinking capacity and 75% loss in respect of speech, 50% disability in respect of loss of strength in the hands and legs and 25% disability due to dizziness upon opening and closing of the eyes. Taking these aspects into consideration, the Tribunal awarded a sum of Rs.1,00,000/- towards Permanent Disability and a sum of Rs.1,50,000/- towards loss of future earnings on account of permanent disability. The Tribunal has correctly considered the materials and evidence, and arrived at Rs.1,00,000/- towards Permanent Disability and Rs.1,50,000/- towards loss of future earnings on account of permanent disability and hence the same need not be enhanced or reduced. The Tribunal has also awarded a sum of Rs.2,000/- towards transportation expenses, Rs.5,000/- towards extra nourishment, Rs.1,000/- towards damages to cycle, Rs.10,000/- towards loss of income during the treatment period and Rs.5,000/- towards pain and suffering. The amounts awarded towards these heads are very reasonable and hence the same are confirmed.

9.In view of the above stated circumstances, the Civil Miscellaneous Appeal as well as the Cross Objection are dismissed. No costs. Consequently, the connected miscellaneous petition is closed. The appellant Insurance Company is directed to deposit the award amount as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-
Assistant Registrar
(Spl Cell-Retd Judges)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Subordinate Judge,
The Motor Accidents Claims Tribunal,
Sankagiri.

Copy to:The Section Officer,
VR Section, Madras High Court.

+1cc to MR.M.B.Gopalan, Advocate SR.51876
+1cc to Mr.N.Manokaran, Advocate SR.52028

C.M.A.No.1568 of 2003
and C.M.P.No.10168 of 2003
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SSD(CO)
CB(05/02/2020)