



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1335 of 2011

and

M.P.No.1 of 2011

M/s.The Oriental Insurance Company Limited,
Branch Manager,
A.A.Complex, 1st Floor,
No.159, Kumaran Road,
Tirupur.

.. Appellant/3rd Respondent

Vs.

1.Pushparaj
2.Kannairam
3.Krishnakumar

..1st Respondent/Petitioner

..Respondents 2 & 3/Respondent 1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 16.09.2010 made in M.C.O.P.No.1461 of 2007 on the file of the learned Motor Accident Claims Tribunal (sub-ordinate Judge) of Tirupur District.

For Appellant : Mr.J.Chandran

For R1 : Mr.S.S.Swaminathan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Order and Decree dated 16.09.2010 made in M.C.O.P.No.1461 of 2007 on the file of the learned Motor Accident Claims Tribunal (sub-ordinate Judge) of Tirupur District.

2. The facts of the case is that on 04.10.2007 at about 17.00 hours, when the first respondent/claimant was going in the vehicle bearing Registration No.TN-35-M-2926 from East to West in the Tirupur-Sundamedu Road, near Cibi Garments, Tirupur, at that time, a van bearing Registration number TN-39-D-4437 driven by its driver, the second respondent herein in the regular course of employment under the third respondent, was coming from West to East so rashly and negligently and without adhering the traffic regulations and dashed against the first respondent/claimant. Due to that accident, the first



respondent/claimant sustained grievous injuries and claimed compensation.

WEB COPY

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.1,98,300/- with interest at 7.5% per annum.

4. Based upon the oral and documentary evidence, the Tribunal has rightly come to the conclusion that the accident had occurred due to rash and negligent driving of the van driver of the second respondent herein and the said finding is hereby confirmed, in the absence of any contra evidence. On the point of quantum of compensation awarded by the Tribunal, it is seen that P.W.2 Doctor Senthilkumar who examined P.W.1, had issued Exhibit P6 disability certificate and assessed the disability at the range of 22.7%.

5. The learned counsel for the appellant/Insurance Company has contended that in the absence of any positive evidence to show that the injured has sustained functional disability, the Tribunal has committed error in computing the compensation under the multiplier method.

6. Heard both. Perused records.

7. After perusing the evidence of P.W.2 Doctor and also the medical records, Exhibits P2, P3, P4, P5 and P7, this Court is of the considered view that the liability of the injured may be fixed at 22% and taking into consideration the date of accident, Rs.2,000/- can be awarded as compensation for 1% and accordingly, Rs.44,000/- is hereby awarded under the head 'permanent disability'.

8. Taking into consideration the nature of the injury sustained by the injured on the head 'pain and suffering' has to be increased from Rs.15,000/- to Rs.25,000/- and towards 'extra nourishment' Rs.10,000/- has to be awarded and towards the transport charges, Rs.10,000/- shall be awarded and for loss of amenities and for medical expenses, Rs.2,500/- awarded by the Tribunal is hereby confirmed taking into consideration the medical bills and also based upon the evidence of P.W.1, Rs.10,000/- is awarded under the head "attender charges". The claimant was not attending the duty for 2 months and if he would have worked, he would have earned and for loss of income for two months, $\text{Rs.4,000} \times 2 = \text{Rs.8,000/-}$ is awarded. Thus, the compensation awarded by the Tribunal is re-assessed and re-fixed as above. Accordingly, the compensation awarded by the



Tribunal is modified Rs.1,19,500/- to the extent indicated above as tabulated hereunder.

Head	Tribunal	High Court
Permanent disability	---	Rs. 44,000/-
Loss of income	Rs. 1,72,800/-	---
Pain and suffering	Rs. 15,000/-	Rs. 25,000/-
Extra nourishment	Rs. 2,000/-	Rs. 10,000/-
Transportation	Rs. 1,000/-	Rs. 10,000/-
loss of amenities	---	Rs. 10,000-
Discomfort	Rs. 5,000/-	---
Medical expenses	Rs. 2,500/-	Rs. 2,500/-
Atatender charges	----	Rs. 10,000/-
Loss of income for two months	---	Rs. 8,000/-
Total	Rs.1,98,300/-	Rs.1,19,500/-

9. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited and the Insurance Company shall withdraw the excess amount, if any already deposited based upon the above calculation. Interest at the rate of 7.5% p.a. is confirmed.

10. With the above reduction in the amount awarded by the Tribunal, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal
(sub-ordinate Judge) of Tirupur District.

Copy To: The Section Officer, V.R.Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.S.S.Swaminathan,Advocate Sr.No. 16156

AKM/07.11.19/4P-4C /
AKM/03.01.2020

C.M.A.No.1335 of 2011 and
M.P.No.1 of 2011