

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1252 of 2015
and M.P.No.1 of 2015

The Manager,
Bharti AXA General Ins. Co., Ltd.,
I Floor, The Fems Loor,
Survey No.28, West to Akhale Ballet,
Doddanakundi, 6th Quarter Road,
Bangalore - 560 037.
Karnataka State by its
Divisional Office
Divya Trade Centre,
I Floor, No.11, Brindavan Road,
Fairlands, Salem - 16. Appellant/Respondents

Vs.

1.R.Manigandan1st Respondent/Petitioner
2.T.Ayyasami1st Respondent/Petitioner/2nd
Respondent/Respondent
R2 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.06.2014 made in M.C.O.P.No.613 of 2011 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mrs.R.Rathna Thara

For R1 : Mrs.S.Udhaya Kumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 12.06.2014 made in M.C.O.P.No.613 of 2011 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P.No.613 of 2011 on the file of Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem. The first respondent

filed the above said claim petition claiming a sum of Rs.10,00,000/- for the injuries sustained by him in the accident that took place on 02.11.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the Share Auto belonging to the second respondent herein and directed the appellant-Insurance Company being the insurer of the vehicle to pay a sum of Rs.9,65,000/- as compensation to the first respondent/claimant.

4.Challenging the said award dated 12.06.2014 made in M.C.O.P.No.613 of 2011 granting compensation to the first respondent/claimant, the appellant-Insurance Company has come out with the present appeal.

5.Though the appellant has raised grounds with regard to liability, at the time of arguments, the learned counsel for the appellant argued with regard to quantum of compensation alone. The learned counsel appearing for the appellant contended that the notional income fixed by the Tribunal is excessive and Tribunal erred in applying multiplier method for awarding compensation towards loss of income and the amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

6.The learned counsel appearing for the first respondent contended that the first respondent has proved the injuries and disability suffered by him by examining P.W.3/Doctor. The first respondent was working as a mason and due to the injuries suffered by him in the accident, he could not carry on his work as mason as he was doing earlier. The injuries are not completely cured and the first respondent is totally immobilized and the amount awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the first respondent and perused the materials available on record.

8.From the materials on record, it is seen that the first respondent has examined Doctor as P.W.3 and proved the nature of injuries and disability suffered by him. The Tribunal has elaborately considered the evidence of P.W.3/Doctor and accepted the percentage of disability and granted compensation. The Tribunal considering the fact that the first respondent was a mason, and the oral and documentary evidence in proper perspective awarded a total sum of Rs.9,65,000/- as compensation to the first respondent. Thus, the compensation awarded by the

Tribunal under different heads are not excessive. There is no error in the award of the Tribunal warranting interference by this Court.

9. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.9,65,000/- awarded by the Tribunal as compensation to the first respondent/claimant, along with interest and costs is hereby confirmed. The appellant-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.613 of 2011. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, along with interest and costs, less the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Special Subordinate Judge No.2,
Motor Accidents Claims Tribunal,
Salem.

+lcc to M/S.R.Rathna Thara, Advocate Sr.7793

C.M.A.No.1252 of 2015
and M.P.No.1 of 2015

cnr[col]
srg 10/06/2019

WEB COPY