IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2215 of 2011
and
M.P.No.1 of 2011
and
CROS.OBJ.No.58 of 2015

The New India Assurance Company Limited,
No.114, New No.204, Kutchery Road,
Mylapore, Chennai-4. ..Appellant / 2nd Respondent

Vs.

1.S.Manivannan ..1st Respondent/ Petitioner
2.R.Perior
(Exparte in the Lower Court) ..2nd Respondent/ 1st Respondent

S.Mannivannan .. Cross Objector in
Cros.Obj.No.58 of 2015

Vs..

1. The New India Assurance Company Limited,
No.114, New No.204, Katcherry Road,
Mylapore, Chennai - 600 004.

2.R.Periar
(Ex-parte in the lower Court) .. Respondents in
Cros.Obj.No.58 of 2015

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.04.2011 made in M.C.O.P.No.4426of 2006 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy
in CMA No.2215/2011 and 1st Respondent in
Cros.Obj.No.58 of 2015

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For R1 : Mr.P.Chinnaraj
in CMA No.2215/2011 and Cross Objector in
Cros.Obj.No.58 of 2015

For R2 : Dispense with

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 21.04.2011 made in M.C.O.P.No.4426 of 2006 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) at Chennai.

2. On 19.09.2006 at 16.30 hours, when the claimant was riding Motor cycle bearing Registration No.TN 02 F 2500 in E.C.R.Road from South to North direction, near Mamallapuram Check Post, the first respondent's goods auto bearing Registration No.TN 07 AC 6795 came from north direction in a rash and negligent manner, hit the claimant from opposite direction, thereby the appellant/claimant sustained grievous injuries. The driver of the goods auto was responsible for the accident. The first respondent as the owner and the second respondent as the Insurance Company are jointly and severally liable to pay compensation. The appellant/claimant claimed a total compensation of Rs.10,00,000/- from the respondents.

3. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a compensation of Rs.3,76,000/- with interest at 7.5% per annum.

4. Heard both sides.

5. The learned counsel for the Insurance Company would submit that the injuries said to have been sustained as could be seen from Exhibit P8, Exhibit P9, Exhibit P10 and Exhibit P11 are not corroborated with the evidence and Exhibit P5 Accident Register issued in the private hospital.

6. However, on perusal of Exhibit P9 discharge summary issued by the Government Stanley Hospital, it appears that subsequent treatment has been taken at Government Stanley Hospital and continued her treatment in the private hospital as per Exhibit P5. Therefore, I do not find any merit in the said statement, because of the factual position as reflected under Exhibits P8, P9 and P10.

7. The learned counsel for the Insurance Company would submit that P.W.2 Doctor has given liberal interpretation of 85% of disability and the Tribunal has awarded at the rate of Rs.1,500/- in respect of 85% disability.

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8. After going through the injuries sustained by the claimant, as could be seen from Exhibit P8, Exhibit P9, Exhibit P10 and Exhibit P11, it appears that he has been taking treatment frequently and continuously and he was admitted as an in-patient for 120 days in the Government Hospital, after initial treatment in the private hospital, also assumes significance.

9. The loss of income for 12 months at Rs.55,000/- is found to be on the higher side, taking note of the income of the fisherman and accordingly, it is reduced to Rs.36,000/-. However, the "transportation charges" is enhanced from Rs.4,000/- to Rs.8,000/- and for "Extra Nourishment", it is enhanced from Rs.8,000/- to Rs.10,000/-. For "pain and suffering" said to have been suffered, a sum of Rs.30,000/- is awarded and the amount under the head of loss of earning power at to Rs.50,000/- is sustained. Hence, the total compensation is hereby reduced to Rs.3,44,000/- from Rs.3,76,000/- as awarded by the Motor Accidents Tribunal. The amount awarded is hereby tabulated:

Heads	Trial Court	High Court
Loss of income for 12 months	Rs. 54,000/-	Rs.36,000/-
Transportation	Rs. 4,000/-	Rs. 8,000/-
Extra Nourishment	Rs. 8,000/-	Rs. 10,000/-
Damage to cloths	Rs. 1,000/-	Rs. 1,000/-
Medical Expenses	Rs. 29,000/-	Rs. 29,000/-
Pain and Suffering	Rs. 50,000/-	Rs. 30,000/-
Loss of amenities of life	Rs. 10,000/-	Rs. 10,000/-
Disability of 85% at the rate of Rs.2000 per disability	Rs.1,70,000/-	Rs.1,70,000/-
Loss of earning power	Rs. 50,000/-	Rs. 50,000/-
Total	Rs.3,76,000/-	Rs.3,44,000/-

10. The learned counsel for the Insurance Company stated that the entire award amount has already been deposited with interest 7.5% per annum.

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11. In the result, this Civil Miscellaneous Appeal is partly-allowed. The Insurance company is entitled to withdraw the balance amount and cross objection is also dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal (III Judge, Court of Small Causes), at Chennai.

copy to: The Section Officer,
VR Section, High Court, Madras. (2 copies)

+1 cc to Mr.M.Krishnamoorthy, Advocate, S.R.No.12785

+1 cc to Mr.P.Chinnaraj, Advocate, S.R.No.13874

C.M.A.No.2215 of 2011 and
M.P.No.1 of 2011 and
CROS.OBJ.No.58 of 2015

MP(CO)
SSM(08/05/2019).

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