

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A.No.1700 of 2015

and

M.P.No.1 of 2015

National Insurance Company Ltd.,
2nd Floor, No.81-D, Chetty Street,
Opposite to Bus Stand,
Tiruchengode Taluk.2nd Respondent/Appellant

Vs.

1.Rangaraju1st Respondent/Petitioner

2.Venkatesh2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.08.2013 made in M.C.O.P.No.424 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.Ma.P.Thangavel

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 13.08.2013 made in M.C.O.P.No.424 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.424 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.10.2012. The Tribunal, considering the pleadings, oral and documentary evidence, held

that the accident occurred due to rash and negligent driving by the driver of the MST Private Bus belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.7,33,000/- as compensation to the 1st respondent. Challenging the said award dated 13.08.2013 made in M.C.O.P.No.424 of 2013, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to note that even as per Ex.P3/M.V.Report, relied on the side of the claimant, the claimant drove the uninsured motorcycle at the time of accident and therefore the fault is on the part of the rider of the motorcycle, as he failed to exercise a reasonable care while riding. The learned counsel further contended that no independent witness was examined to prove negligence. The negligence determined by the Tribunal is not proper. Further the assessment of PW2/Doctor regarding the disability has no basis. The injuries cannot attract any disability and infact the assessment is against medical science and guidelines. The Tribunal erroneously granted a huge sum of Rs.5,85,000/- towards disability without any basis by applying multiplier method, the said assessment is excessive. Further contended that the Tribunal failed to note that the claimants has not undergone any subsequent treatment after initial period of treatment and hence the question of disability and future loss of earning power does not arise. On the whole, the sum awarded by the Tribunal is highly excessive and contrary to the principles laid down in the Hon'ble High Court and Hon'ble Supreme Court and prayed for setting aside the award of the Tribunal.

4.Heard Mr.D.Bhaskaran, learned counsel appearing for the appellant/Insurance Company and Mr.Ma.P.Thangavel, learned counsel appearing for the 1st respondent and perused the materials available on record.

5.From the materials available on record, it is seen that the 1st respondent/claimant examined P.W.2-Doctor, who deposed about the nature of injuries, treatment and disability suffered by 1st respondent. Considering the nature of injuries and disability, P.W.2-Doctor certified that 1st respondent suffered 65% disability. The Tribunal considering the contention of the 1st respondent that he was a driver cum manager and was earning a sum of Rs.10,000/- per month, has fixed Rs.5,000/- as monthly income of the 1st respondent. Since the accident has occurred in the year 2012, the monthly income fixed by the Tribunal is not excessive. It is seen that the Tribunal considering the avocation, age, nature of injuries and disability suffered by the 1st respondent, applied multiplier method and awarded

compensation under different heads, which accordingly to this Court is not excessive. Since this Court finds no reason to interfere with the award passed by the Tribunal the same is confirmed.

6.In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.7,33,000/- awarded by the Tribunal as compensation to the 1st respondent/1st claimant, along with interest and costs is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

7.The appellant/Insurance Company is directed to deposit the award amount with interest and costs, less the amount already deposited, if any, within a period six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.424 of 2013. On such deposit, the 1st respondent/ 1st claimant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

mtl

To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

2.The Section Officer,
VR Section,
High Court,
Madras.

+1 CC to Mr.Baskaran, Advocate sr 71868

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 71806.

C.M.A.No.1700 of 2015
and
M.P.No.1 of 2015

MG (CO)
SP(16/12/2019)