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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2198 of 2015

and

M.P.No.1 of 2015

Reliance General Insurance Co. Ltd.,
Sakthi Super Market Building,
3rd Floor, Perundurai road,
Erode.

.. Appellant/2nd Respondent

Vs.

1.Nandagopal

2.Muthukumar

..Respondents/Petitioner and
1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.01.2015 made in M.C.O.P.No.507 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.MA.P.Thangavel

R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 08.01.2015 made in M.C.O.P.No.507 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

2.The appellant is 2nd respondent in M.C.O.P.No.507 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur. The 1st respondent filed the



above 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 28.10.2010. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver-cum-owner of the omni car-2nd respondent and directed both the 2nd respondent as well as appellant-Insurance Company being insurer of the said omni car to pay jointly and severally, a sum of Rs.3,34,935/- as compensation to the 1st respondent-claimant. Against the said award dated 08.01.2015 made in M.C.O.P.No.507 of 2011, the appellant has come out with the present appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

3.The learned counsel appearing for the appellant contended that the Tribunal has failed to note that the coverage issued under the policy is to indemnify the liability of the 2nd respondent out of tortuous act of the rider. The Tribunal has awarded higher compensation towards medical expenses without any document and the Tribunal has erred in considering the evidence of PW2-Doctor and awarded a sum of Rs.1,38,000/- towards permanent disability, which is on the higher side. The amounts awarded by the Tribunal under different heads are on the higher side and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent-claimant contended that the amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

6.From the materials available on record, it is seen that as per the evidence of PW2-Doctor, 1st respondent has sustained fracture on knee & foot of the right leg, rod was implanted and certified the disability of the 1st respondent at 46%. The Tribunal considering the evidence of PW2-Doctor, fixed the disability of the 1st respondent at 46% and awarded a sum of Rs.1,38,000/- towards disability by awarding Rs.3,000/- per percentage and the same is in order. The contention of the appellant-Insurance Company that the 1st respondent is entitled to only a sum of Rs.15,000/- towards medical expenses as per Section 163-A of the Motor Vehicles Act has considerable force. As per Second Schedule of Motor Vehicles Act, when a claim petition is filed under Section 163A and the claimant has claimed compensation for injuries, he is entitled to Rs.5,000/- for pain and suffering, Rs.15,000/- for medical expenses and loss of earning upto 52 weeks. The Tribunal without considering



the above provision, awarded excess amount and hence, they are set aside. A sum of Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering are granted. The amounts awarded by the Tribunal towards transport and extra nourishment are set aside. The Tribunal has awarded a sum of Rs.9,000/- towards loss of income by considering the fact that the 1st respondent-claimant would have lost income for three months due to the injuries sustained by him in the accident and the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical Expenses	1,27,935	15,000	Reduced
2.	Disability	1,38,000	1,38,000	Confirmed
3.	Pain and Suffering	50,000	5,000	Reduced
4.	Transportation	5,000	-	Set aside
5.	Extra Nourishment	5,000	-	Set aside
6.	Loss of Income	9,000	9,000	Confirmed
	Total	3,34,935	1,67,000	Reduced by Rs.1,67,935 /-

7. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,34,935/- is hereby modified to Rs.1,67,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. Both the appellant-Insurance Company as well as 2nd respondent are directed to deposit the modified award amount now determined by this Court along with interest and costs jointly and severally, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent-claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. Both the appellant-Insurance Company as well as 2nd respondent are permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.507 of 2011 on



the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

kj/rst

To

1.The Motor Accidents Claims Tribunal
Chief Judicial Magistrate, Tiruppur.

2.The Section Officer
V.R.Section, High Court, Chennai.

+1cc to Mr.S.Arun Kumar, Advocate SR.No.9011

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.8950

C.M.A.No.2198 of 2015
and M.P.No.1 of 2015

GMR(CO)
GMY(15/10/2019)