

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3091 of 2011

and

MP.No.1 of 2011

The Oriental Insurance Co.Ltd.,
Erode. ... Appellant/3rd Respondent

Versus

1.K.Mahendran ...1st Respondent/Petitioner

2.D.Mohanan ...2nd Respondent/1st Respondent

3.Sri Kannan Departmental Store Pvt.Ltd.,
Door No.13, Annaji Street,
Erode - 1, Erode Taluk & District.
...3rd Respondent/2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Order and Decree dated 18.04.2011 made in MACTOP.No.465 of 2009 on the file of the Motor Accident Claims Tribunal (I-Additional Subordinate Judge) at Erode.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.A.K.Kumarasamy (for R1)

: Exparte (for R2 & R3)

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JUDGMENT

The appellant/Insurance company has preferred this appeal, challenging the award dated 18.04.2011 made in MACTOP.No.465 of 2009 on the file of the Motor Accident Claims Tribunal (I-Additional Subordinate Judge) at Erode, insofar as it relates to quantum of compensation awarded by the Tribunal, which according to the appellant is highly excessive.

2.The gist of the case of the first respondent/claimant is that on 24.04.2009, at about 3.45 pm., when the claimant was riding his motorcycle bearing Regn.No.TN-33-AF-7642 on the Erode to Palani road, near Navarasam KG.School, Palliyuthu, a Mahindra pickup van bearing Regn.No.TN-33-Q-3566, which was coming behind the motorcycle and was driven by its driver in a rash and negligent manner, dashed, against the claimant, in the impact, the claimant sustained injuries all over the body. The accident occurred only due to reckless manner of driving of the driver of the offending vehicle. After the accident, the claimant was immediately admitted to the K.M.C. Hospital, Erode and then shifted for further treatment to K.M.C. Hospital, Coimbatore, wherein, he took one month treatment as an inpatient. He was aged 36 years at the time of accident and earning not less than Rs.25,000/- from agricultural lands and work of coir mill. On account of the injuries and fractures sustained in the said accident, now he is unable to do his regular course of work and his avocation as before the accident. Therefore, the claimant filed the claim petition in MACTOP.No.465 of 2009 before the Tribunal, claiming a sum of Rs.20,25,000/- which was restricted to Rs.20,00,000/- as compensation.

3.The Insurance Company resisted the claim petition by way of filing counter affidavit, contending that the driver of the motorcycle bearing Regn. No.TN-33-AF-7642 belonged to the second respondent in the claim petition was driven in a rash and negligent manner, which resulted, the claimant sustaining simple injuries and fractures. The Insurance Company also denied the age, avocation and income of the claimant and prayed for dismissal of the claim petition.

4.Before the Tribunal, in order to prove the averments in the claim petition, on the side of the claimant, he was examined himself as PW.1, and two Doctors, one Dr.Kesavamoorthy and Dr. Senthil Kumar were examined as PW.2 & PW.3 respectively. There were as many as Twenty six documents marked as Ex.A1 to A26. On the side of the respondents, neither oral nor documentary evidence was adduced.

5.After analysing the oral and documentary evidence, namely Ex.A6/ copy of wound certificate, Ex.A7/ copy of charge sheet, Ex.A8/copy of judgment in STC 1720 of 2009 and Ex.P19/discharge summary and the cross examination of PW.2 & PW.3/Doctors, who examined the claimant and assessed his disabilities at the rate of 54% respectively and also after taking note of the age of the claimant and his avocation the Tribunal, awarded Rs.6,22,080/- towards loss of earning due to permanent disability. Considering the period of hospitalization and the injuries of the claimant, the sum of Rs.1,00,000/- was awarded towards pain and sufferings and other conventional heads and totally a sum of Rs.13,28,080/-

was awarded by the Tribunal as compensation to the claimant. Aggrieved by the same, the present appeal is filed by the appellant/Insurance Company seeking to reduce the compensation.

6.The learned counsel appearing for the appellant/Insurance company contended that the Tribunal awarded excess amount in respect of partial permanent disability at the rate of 54%, as the Doctors assessed itself and by adopting multiplier '16' and other conventional heads are also highly excessive. Therefore, the learned counsel for the appellant prays to allow this appeal.

7.This Court heard the learned counsel for the appellant as well as the learned counsel for the first respondent. The second and the third respondents remained ex-parte before the Tribunal.

8. On going through the oral and documentary evidence placed before the Tribunal, it is seen from the evidence of Ex.A6/wound certificate, Ex.A13/Radiologist report, Ex.A14 & A15/ X-rays, EX.A16/CT scan, Ex.A17/Radiograph, Ex.A19/discharge summary and Ex.26/disability certificate for the fracture of spinous porcess of D6 to D11 vertebrae, fracture over bilateral interior pubic rami and fracture over left acetabulam, from C.T scan report, it was further found that there were liner laceration in Seg.VIII, IV and Angio showed active bleeding from dorsal artery of penis and the claimant had undergone several operations for the injuries sustained by him. At the time of accident, the claimant was aged 36 years. Even though in the absence of any positive evidence to prove his income, the Tribunal has concluded that as a Coir man and owning agricultural lands, he could have earned a sum of Rs.6,000/- per month, by applying multiplier '16', the amount was arrived at Rs.6,22,080/- (Rs.6000 x 12 x 16 x 54/100) towards loss of earning due to permanent disability, which is on higher side. Therefore, this Court is of the considered view that the disability of the claimant is considered as partial disability and the same is hereby re-assessed at the rate of 35% and this Court arrives at Rs.4,03,200/- (Rs.6000 x 1/2 x 12 x 16 x 35/100) towards loss of earning. For Pain and Suffering, Extra Nourishment, Transport charges, Medical expenses and Loss of amenities, the Tribunal awarded Rs.1,00,000/-, Rs.50,000/-, Rs.16,000/-, Rs.4,40,000/- and Rs.1,00,000/- respectively, which is highly excessive amount awarded by the Tribunal. Except the Transport charges, the other heads of amounts are highly excessive and the same is hereby modified and based upon the age of the claimant and the nature of injuries, this Court is of the considered view, to reduce the amount under the heads of Pain and suffering, Extra-nourishment and Loss of amenities, which are arrived at Rs.40,000/-, Rs.20,000/- and Rs.30,000/- respectively. Based upon the evidence of Ex.A9 & A10/Medical bills, the sum of Rs.4,40,000/- awarded by the Tribunal is hereby confirmed. The Tribunal did

not award any amount towards Attendant charges, which is arrived at Rs.10,000/- based upon the period of hospitalization. Accordingly, the compensation award amount of Rs.13,28,080/- awarded by the Tribunal to the claimant is hereby re-calculated as under:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of earning capacity due to permanent disability	Rs.6,22,080/-	Rs.4,03,200/-
For pain and suffering	Rs.1,00,000/-	Rs.40,000/-
Extra-nourishment	Rs.50,000/-	Rs.20,000/-
Transport charges	Rs.16,000/-	Rs.16,000/-
Medical expenses	Rs.4,40,000/-	Rs.4,40,000/-
Loss of amenities	Rs.1,00,000/-	Rs.30,000/-
Attendant charges	-	Rs.10,000/-
Total	Rs.13,28,080/-	Rs.9,59,200/-

9. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed by reducing the compensation awarded by the Tribunal from Rs.13,28,080/- to Rs.9,59,200/-. The Insurance Company is directed to deposit the amount of Rs.9,59,200/- together with interest, if not already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. If there is any excess amount deposited, the Insurance company is at liberty to withdraw the same. On such deposit being made, the claimant is entitled to withdraw the entire amount as determined in this appeal with accrued interest thereon. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(I-Additional Subordinate Judge), Erode.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 CC to Mr.M.Krishnamoorthy, advocate sr 22030.

+1 CC to Mr.S. Kaithamalai Kumaran, Advocate sr 22120.

C.M.A.No.3091 of 2011

KJ (CO)
SP (19/09/2019)



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