

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2389 of 2015

and

M.P.No.1 of 2015

The Branch Manager,
Oriental Insurance Co.Ltd., Branch Office,
No.23-B, Ground Floor, Arunagiri Complex,
Byepass Road, Hosur - 635 109.

... Appellant/R2 in Trial Court

Vs.

1.N.Thyagaraja Reddy

2.M.Sudappa

.. Petitioner/1st Respondent in Trial Court

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 30.06.2015 made in M.C.O.P.No.2982 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.S.Manohar

For R1 : Mr.K.Prasanna
for M/s.Mukund R.Pandiyan

For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 30.06.2015 made in M.C.O.P.No.2982 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant is the second respondent in M.C.O.P.No.2982 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. The first respondent filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.11.2010.

3.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 mini bus belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.8,95,676/- as compensation to the first respondent/claimant.

4. Against the said award dated 30.06.2015 made in M.C.O.P.No.2982 of 2013 granting compensation to the first respondent/claimant, the appellant-Insurance Company has come out with the present appeal.

5. Though the learned counsel for the appellant raised various grounds with regard to negligence, at the time of arguments, he has restricted his contention with regard to quantum of compensation alone.

6. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding compensation by adopting multiplier method to grant compensation for 45% disability, when P.W.2/Doctor did not certify the percentage of disability for whole body. The first respondent has not let in any evidence to prove that he was removed from service. The first respondent after the accident is working in the same company without any reduction in salary. The appellant has not suffered any functional disability and the multiplier method adopted by the Tribunal for granting compensation is not proper. The Tribunal after awarding compensation by adopting multiplier method, erred in awarding Rs.24,000/- for loss of income. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

7. Per contra, the learned counsel appearing for the first respondent contended that immediately after the accident, the first respondent was admitted in Government Hospital and underwent surgery. The first respondent was an employee in Ashok Leyland, Hosur and was earning a sum of Rs.27,000/- per month. The Tribunal without properly appreciating the materials, erroneously fixed a meager sum of Rs.6,000/- as monthly income of the first respondent. P.W.2/Doctor assessed that the first respondent suffered 55% disability and the Tribunal reduced the same to 45% without any basis. The Tribunal ought to have granted compensation for 55% disability. The Tribunal ought to have granted 7.5% interest for the compensation amount instead of 6%. The amount awarded by the Tribunal under different heads are meager and prayed for dismissal of the appeal.

8. I have heard the learned counsel appearing for the appellant-Insurance Company as well as the first respondent and perused the entire materials on record.

9. From the materials available on record, it is seen that it is the contention of the first respondent that he was an employee in Ashok Leyland, Hosur and was earning a sum of Rs.27,000/- per month. The Tribunal considering the judgment of Hon'ble Apex Court, fixed a sum of Rs.6,000/- as monthly income of the first respondent, which is meager. The accident occurred in the year 2010 and the monthly income of the first respondent is fixed at Rs.12,000/-. The compensation awarded by the Tribunal towards loss of income is modified to Rs.48,000/- [Rs.12,000/- X 4]. The first respondent has not proved that he was removed from service and he suffered functional disability. According to the appellant, the first respondent is still working in Ashok Leyland, Hosur and there is no loss of earning capacity for the first respondent. The amount awarded by the Tribunal by adopting multiplier is liable to be set aside and the same is hereby set aside. P.W.2/Doctor assessed that the first respondent suffered 55% disability and the Tribunal reduced the same to 45% disability without giving any valid reason. The first respondent is entitled to compensation for 55% disability at the rate of Rs.3,000/- per percentage. A sum of Rs.1,65,000/- [Rs.3,000/- X 55] is granted by this Court towards disability. The amount awarded by the Tribunal under other heads are 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.	Loss of earning capacity	4,21,200/-	-	set aside
2.	Partial loss of income	24,000/-	48,000/-	enhanced
3.	Pain and suffering	75,000/-	75,000/-	confirmed
4.	Extra nourishment and transportation	30,000/-	30,000/-	confirmed
5.	Medical bills	1,70,476/-	1,70,476/-	confirmed
6.	Future medical expenses	1,00,000/-	1,00,000/-	confirmed
7.	Attendant charges	25,000/-	25,000/-	confirmed
8.	Loss of Amenities	50,000/-	50,000/-	confirmed
9.	Disability	-	1,65,000/-	granted

Total	Rs.8,95,676/-	Rs.6,63,476/-	reduced by Rs.2,32,200/-
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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,95,676/- is hereby modified to Rs.6,63,476/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount, now determined by this Court 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. On such deposit, the first respondent is permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.2982 of 2013 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

Copy to

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

+1 CC to Mr.S.Manohar, Advocate sr 40701.

+1 CC to Mr. Mukund R. Pandiyan, Advocate sr 41337.

C.M.A.No.2389 of 2015 and
M.P.No.1 of 2015

EV(CO)
SP(26/09/2019)