



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1525 of 2016
and
C.M.P.No.11660 of 2016

The Divisional Manager,
The Oriental Insurance Company Limited,
Divisional Office, Eswaran Koil Street,
Puducherry. .. Appellant / 2nd Respondent

Vs.

1.Janakiraman .. 1st Respondent / Petitioner

2.Sastha Enterprises, 10, Kalaignar Nagar,
Main Road, Padi, Chennai - 600 060.
.. 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 29.03.2016 made in M.C.O.P.No.2385 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Mr.S.Manohar

For R1 : Mr.D.S.Thirumavalavan

For R2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the quantum of compensation granted to the 1st respondent by award dated 29.03.2016 made in M.C.O.P.No.2385 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

2. The appellant- Insurance Company is 2nd respondent in M.C.O.P.No.2385 of 2013, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.. The 1st respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.05.2013. The Tribunal,



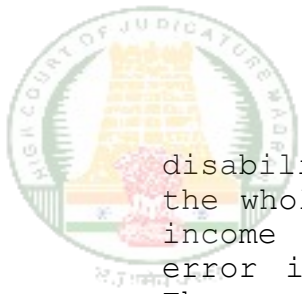
considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Ace goods vehicle belonging to the 2nd respondent and directed the appellant- Insurance Company to pay a sum of Rs.2,78,000/- as compensation to the 1st respondent. Against the said award dated 29.03.2016 made in M.C.O.P.No.2385 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 contended that the 1st respondent has not produced any records with regard to nature of injuries. In the absence of any material, the Tribunal erroneously fixed percentage of disability and applied multiplier method and awarded excessive compensation. There was no evidence that the 1st respondent suffered functional disability and he could not continue his avocation as agricultural coolie. The Tribunal failed to appreciate that the 1st respondent is still continuing his avocation as agricultural coolie without any loss of income. The monthly income of Rs.5,000/- fixed by the Tribunal and applying multiplier '15' is excessive and prayed for setting aside the award of the Tribunal.

4.The learned counsel appearing for the 1st respondent contended that the 1st respondent suffered fracture of right inferior pubic ramus injuries and examined P.W.2-Doctor to prove the nature of injuries and disability. P.W.2-Orthopedic surgeon has deposed that the movement of hip joint of the appellant is restricted with pain. So the 1st respondent could not do his normal work and assessed the disability at 35%. The Tribunal reduced the percentage of disability and assessed the same with reference to whole body at 25% holding that 1st respondent due to the injuries suffered functional disability and applied multiplier method for awarding compensation. The amount granted 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-Insurance Company as well as learned counsel appearing for the 2nd respondent and perused the materials available on record.

6.From the materials available on record, it is seen that the 1st respondent contended that due to the fracture and multiple injuries, the 1st respondent could not do any work, he is depending on others, he lost his entire income, permanently disabled and incapacitated from earning and lost earning capacity. The contention of learned counsel for 1st respondent is that 1st respondent was working as a agricultural coolie and was earning a sum of Rs.9,000/- per month. The 1st respondent was aged 40 years at the time of the accident. The Tribunal considering the nature of injuries, evidence of P.W.2-Doctor and



disability certificate, reduced the percentage of disability to the whole body of the 1st respondent to 25% and fixed the monthly income as Rs.5,000/- and applied multiplier method. There is no error in applying multiplier method for granting compensation. The accident is of the year 2013, monthly income fixed by the Tribunal is meagre. The Tribunal has not granted any amount towards future prospects. Hence the amounts granted by the Tribunal under different heads are not interfered with.

7. In the result, this Civil Miscellaneous Appeal is dismissed and sum of Rs.2,78,000/- awarded by the Tribunal as compensation to the 1st respondent/1st claimant, along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the award amount 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 to the credit of M.C.O.P.No.2385 of 2013. On such deposit, the 1st respondent is permitted to withdraw the award amount, along with interest and costs, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

mtl

Sub Assistant Registrar

To

1. The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Cuddalore.

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

+1 cc to M/s.S.Manohar, Advocate, S.R.No.24321

+1 cc to M/s.D.S.Thirumavalavan, Advocate, S.R.No.24427

C.M.A.No.1525 of 2016
and
C.M.P.No.11660 of 2016

EV(CO)
SSM(19/08/2019)