



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.970 of 2015
and M.P.No.1 of 2015

The Oriental Insurance Co. Ltd.,
Branch Office,
22/C, Siva Plaza Saradha College Road,
Salem - 636 606.
(Policy No.Yr.2005/665 for the period from
03.06.2004 to 02.06.2010) .. Appellant/2nd respondent

Vs.

1.M.Arunkumar
2.Dr.C.S.Sujatha .. Respondents/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2015 made in M.C.O.P.No.922 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.Mukund R.Pandiyan

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the award dated 30.01.2015 made in M.C.O.P.No.922 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.922 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The 1st respondent filed the said claim petition under Section 163A of the Motor Vehicles Act, claiming a sum of Rs.8,00,000/- as compensation for the injuries sustained by him in the accident that took place on 21.08.2004. The Tribunal,



considering the pleadings, oral and documentary evidence, held that the accident occurred due to negligent act of the 1st respondent/driver of the TATA Sumo belonging to the 2nd respondent and directed the appellant/Insurance Company to pay a sum of Rs.5,07,700/- as compensation to the 1st respondent. Against the said award dated 30.01.2015 made in M.C.O.P.No.922 of 2013, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal.

3.Though the learned counsel appearing for the appellant/Insurance Company filed this appeal raising various grounds, at the time of argument, he has restricted his contention only with regard to quantum of compensation awarded by the Tribunal.

4.The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent has filed the claim petition under Section 163A of the Motor Vehicles Act and the Tribunal has erroneously awarded excessive compensation contrary to the II Schedule of the Motor Vehicles Act and prayed for setting aside the award of the Tribunal.

5.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.

6.Heard the learned counsel appearing for the appellant/Insurance Company as well as the 1st respondent and perused all the materials available on record.

7.From the materials available on record, it is seen that as per the evidence of PW2-Doctor, 1st respondent has sustained fractures on ribs, dislocation of right hip and certified the disability of the 1st respondent at 55%. The Tribunal has reduced the same to 40%. According to the 1st respondent, he was earning a sum of Rs.7,000/- per month as driver. Due to the injuries sustained by him in the accident, he could not do the work as he was doing earlier. In the absence of any evidence, the Tribunal has fixed a sum of Rs.4,000/- as monthly income of the 1st respondent, applied multiplier 18 and awarded a sum of Rs.3,45,600/- (Rs.4,000/- X 12 X 18 X 40%) towards loss of earning capacity and the same is not proper. The annual income of 1st respondent is fixed as Rs.40,000/-. The loss of earning capacity awarded by the Tribunal is reduced to Rs.2,88,000/- (Rs.40,000/- X 18 X 40%). The 1st respondent has filed the claim petition under Section 163A of the Motor Vehicles Act. The contention of the



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appellant/Insurance Company that the 1st respondent is entitled to only a sum of Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering as per Section 163-A of the Motor Vehicles Act, has considerable force. As per II Schedule of the Motor Vehicles Act, when a claim petition is filed under Section 163A of the Act and the claimant has claimed compensation for injuries, he is entitled to Rs.5,000/- towards pain & suffering and Rs.15,000/- towards medical expenses. The Tribunal without considering the above provision, awarded excess amount and hence the compensation awarded by the Tribunal is hereby set aside. A sum of Rs.15,000/- and Rs.5,000/- are granted towards medical expenses and pain & suffering respectively. The amounts awarded by the Tribunal under other heads are set aside. 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	3,45,600	2,88,000	Reduced
2.	Loss of income	12,000	-	Set aside
3.	Extra nourishment and transportation	10,000	-	Set aside
4.	Pain and suffering	30,000	5,000	Reduced
5.	Medical bills	65,100	15,000	Reduced
6.	Future medical expenses	20,000	-	Set aside
7.	Attendant charges	10,000	-	Set aside
8.	Discomfort and loss of amenities	15,000	-	Set aside
	Total	Rs.5,07,700/-	Rs.3,08,000/-	Reduced by - Rs.1,99,700/-



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8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,07,700/- is hereby reduced to Rs.3,08,000/- together with interest at the rate of 6% 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 1st respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. 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.922 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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

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

+1cc to Mr.S.Arunkumar , Advocate SR.No. 30607

+1cc to Mr.Mukund P.Pandian , Advocate SR.No. 30657

C.M.A.No.970 of 2015

and M.P.No.1 of 2015

VG II

A.SK(19/11/2019)