IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.3310 of 2019
and
C.M.P.No.19248 of 2019

The Oriental Insurance Company Limited,
Branch Office,
No.3, L.Sidda Veerappa Chetty Street,
Dharmapuri Town & District. .. Appellant

Vs.

1. Saravanan
2. C.Chinnasamy .. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.02.2019 made in M.C.O.P.No.111 of 2015 on the file of The Motor Accidents Claims Tribunal, Subordinate Court, Dharmapuri.

For Appellant : Mr.N.Vijayaraghavan
For R1 : Mr.V.Sakkarapani

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.7,53,042/- towards compensation to the first respondent/claimant due to the injuries sustained by him in a motor vehicle accident.

2. The case in brief is as follows:

On the fateful day, i.e., on 18.05.2012, at about 9.30pm, the first respondent/claimant was travelling as a loadman in Mahindra Lorry bearing registration No. TN 70 0731 belonging to the second respondent and insured with the appellant insurance company. When the said lorry was proceeding in the Sathyamangalam - Mysore Road, near Chamaraj Nagar, it capsized, due to the rash and negligent driving by its driver. Due to the said impact, the first respondent/claimant sustained grievous injuries all over the body. He filed a claim petition claiming a sum of Rs.7,00,000/- as compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.7,53,042/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant Insurance Company has submitted that the injured had travelled in the vehicle as an unauthorised passenger. However, the Tribunal has erred in fastening the liability on the appellant/Insurance company. He further submitted that the compensation awarded by the Tribunal is excessive and exorbitant and hence, the same has to be reduced substantially.

4.Per contra, the learned counsel for the first respondent/claimant submitted that the Tribunal after evaluating the oral and documentary evidence, has rightly fastened the liability on the appellant insurance company and awarded the compensation, which is just and reasonable and hence, the same do not require any interference in the hands of this Court.

5.Heard the learned counsel appearing for the appellant and learned counsel appearing for the first respondent and perused the materials available on record carefully and meticulously.

6.Upon considering the materials and evidence available on record, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry and hence, the same is confirmed as such.

7.As regards the liability of the appellant insurance company to pay compensation to the claimant, the Tribunal has examined the oral and documentary evidence adduced by the parties, which revealed that the second respondent herein is the owner of the vehicle and the vehicle was insured with the appellant Insurance Company. Further, at the time of accident, the injured travelled in the vehicle as a coolie to load and unload chicken chiks from Gobichettipalayam to Mysore; and he was covered by the insurance policy, since the owner of the vehicle has paid additional premium to cover the workman, in addition to the driver. Hence, the Tribunal has rightly fastened the liability on the appellant insurance company, which finding, this Court is not inclined to interfere.

8.In respect of the quantum of compensation, the first respondent/claimant himself examined as P.W.1, who deposed that he was aged 35 years and was earning a sum of Rs.7,500/- per month as an Agriculturist and Coolie. However, no authenticated document was filed to prove the same. P.W.2/Doctor has narrated about the nature of the injuries and permanent disability sustained by the Claimant. The Tribunal has taken the permanent disability at 77% and awarded Rs.5,17,440/-, which, in the opinion of this Court, is on the higher side. Having regard to the materials and evidence available on record, this Court deems it fit to reduce the percentage of permanent disability from 77% to 20%, but enhance the monthly income of the injured to Rs.7,500/-. Accordingly, the compensation awarded by the Tribunal towards permanent disability is reduced to Rs.2,88,000/- [7500 x 12 x 16 x 20%]. However, the loss of income during treatment period is enhanced to Rs.22,500/- [7500 x 3]. Considering the nature of the injuries sustained by the claimant, the award of Rs.50,000/- for pain and suffering is slightly on the higher side and hence, the same is hereby reduced to Rs.40,000/-.

9.That apart, the Tribunal has not awarded any amount towards loss of amenities. Hence, this Court is inclined to award Rs.25,000/- and the same is hereby awarded under this head. However, there is no modification as regards the compensation awarded by the Tribunal towards transportation, attendant charges, extra nourishment and damage and medical expenses for Rs.15,000/-, Rs.10,000/-, Rs.20,000/- and Rs.1,30,102/- respectively. Thus, the award of the Tribunal is reduced from Rs.7,53,042/- to Rs.5,50,602/-, the break-up details of which, read thus:

Head	Compensation awarded by the Tribunal (Rs.)	Compensation enhanced by this Court (Rs.)
Permanent disability	5,17,440/-	2,88,000/-
Pain and Suffering	50,000/-	40,000/-
Transportation	15,000/-	15,000/-
Attendant charges	10,000/-	10,000/-
Extra Nourishment & Damages	20,000/-	20,000/-
Loss of Income during treatment period	10,500/-	22,500/-
Medical Expenses	1,30,102/-	1,30,102/-
Loss of amenities	----	25,000/-
Total	7,53,042/-	5,50,602/-

10.In fine, this appeal is partly allowed. No costs. Consequently, the appellant Insurance Company is directed to deposit the aforesaid modified compensation amount along with interest at 7.5% per annum from the date of petition and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement.

On such deposit being made, the Tribunal shall transfer the same to the savings bank account of the first respondent/claimant through RTGS within a period of one week thereafter.

Sd/-
Assistant Registrar(MD)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Subordinate Court, Dharmapuri.

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

+1cc to Mr.N.Vijayaraghavan , Advocate SR.No. 99097
+1cc to Mr.V.Sakkarapani , Advocate SR.No. 98628

C.M.A.No.3310 of 2019
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A.SK(21/07/2020)