

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1625 of 2017 and
C.M.P.No.8610 of 2017

Divisional Manager,
The New India Assurance Company Ltd.,
Door No.30, J.N.Street, Pondicherry.

.. Appellant/2nd respondent

Vs.

1.Durairaj ..1st respondent /Claimant
2.Ramesha Bevi ..2nd Respondent/1st respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2017 made in M.C.O.P.No.2969 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

For Appellant : Mr.J.Chandran
For R1 : Mr.R.Sreedhar
For R2 : No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 27.02.2017 made in M.C.O.P.No.2969 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore.

2.The appellant is the second respondent in M.C.O.P.No.2969 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional Sub Court, Cuddalore. 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 28.07.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus

belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.4,31,090/- as compensation to the first respondent/claimant.

4. Against the said award dated 27.02.2017 made in M.C.O.P.No.2969 of 2015 granting compensation to the first respondent/claimant, the appellant-Insurance Company has come out with the present appeal challenging the quantum as well as the liability. When the appeal is taken up for hearing, the learned counsel for the appellant contended that he is not questioning the liability. He is perusing the appeal only with regard to quantum of compensation.

5. The learned counsel appearing for the appellant-Insurance Company contended that the Medical Board assessed that the first respondent suffered only 3% permanent disability. The Tribunal without any basis, erroneously fixed 20% disability in the absence of any medical evidence and applied multiplier method for granting compensation. The injuries suffered by the first respondent is only simple in nature and he was treated in the hospital for one day and first respondent has not proved that he suffered functional disability. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award passed by the Tribunal.

6. Per contra, Mr.R.Sreedhar, learned counsel appearing for the first respondent contended that the first respondent was aged 19 years at the time of accident and suffered injuries and disability. The disability certificate issued by the Medical Board is not correct. In view of the same, the Tribunal has fixed 20% disability as suffered by the first respondent and granted compensation by applying multiplier method. The Tribunal considering the nature of injuries, awarded compensation under different heads which are not excessive and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the first respondent examined himself as P.W.1 and deposed about the nature of injuries. From Ex.C1/disability certificate issued by the Medical Board, it is seen that the first respondent suffered 3% disability and Doctors have certified that the first respondent suffered only simple injuries. The Tribunal without any basis fixed percentage of disability at

20% and adopted multiplier method for granting compensation. The first respondent has not proved that he suffered functional disability and 20% disability. In view of the same, the amount awarded by the Tribunal for disability is set aside. The appellant is entitled only a sum of Rs.9,000/- at the rate of Rs.3,000/- per percentage of disability.

$$\text{Rs.3,000/-} \times 3\% \text{ of disability} = \text{Rs.9,000/-}$$

Considering the entire materials on record and age of the first respondent, this Court is not interfering with the amounts awarded by the Tribunal under other heads. Thus, the compensation awarded by the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	2,59,200/-	9,000/-	reduced
2.	Pain and suffering	35,000/-	35,000/-	confirmed
3.	Extra Nourishment	5,000/-	5,000/-	confirmed
4.	Attender charges	10,000/-	10,000/-	confirmed
5.	Loss of Amenities	35,000/-	35,000/-	confirmed
6.	Loss of clothes	1,000/-	1,000/-	confirmed
7.	Loss of income	36,000/-	36,000/-	confirmed
8.	Transportati on	10,000/-	10,000/-	confirmed
9.	Medical bills	39,890/-	39,890/-	confirmed
	Total	Rs.4,31,090/-	Rs.1,80,890/-	reduced by Rs.2,50,200/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,31,090/- is hereby modified to Rs.1,80,890/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The learned counsel for the appellant-Insurance Company submitted that the appellant-

Insurance Company already deposited a sum of Rs.75,000/- to the credit of M.C.O.P.No.2969 of 2015. The appellant-Insurance Company is directed to deposit the balance award amount, now modified by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight 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, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.

+1cc to Mr.J.Chandran , Advocate SR.No. 19502
+1cc to Mr.P.Sreedhar , Advocate SR.No. 19889

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A.SK(19/09/2019)