



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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C.M.A(MD).No.202 of 2019

and

C.M.P. (MD) .Nos.2713 and 7059 of 2019

Iffco-Tokio General Insurance Company Limited

Through its Branch Manager

D.No.82, Breetham Plaza

Chandragandhi Nagar, Bypass Road

Ponmeni, Madurai 626 016

... Appellant/ Respondent No.2

Vs.

1.Thanikodi

... First Respondent/Claimant

2.Mahaboobjohn

... Second Respondent/First Respondent

PRAYER:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 09.11.2018, passed in M.C.O.P.No.40 of 2016 by the Motor Accident Claims Tribunal / Subordinate Judge, Aruppukkottai.

For appellant : Mr.V.Sakthivel

For 1st respondent : Mr.M.Jothi Basu

For 2nd respondent : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 09.11.2018, passed in M.C.O.P.No.40 of 2016 by the Motor Accident Claims Tribunal / Subordinate Judge, Aruppukkottai.

2. It is the case of the first respondent/claimant that on 26.06.2016 at about 3.00 p.m, when the first respondent/claimant was riding his Motorcycle bearing Registration No.TN 67 BA 1689 from North to South on the Madurai to Aruppukkottai National Highways, at that time, the driver of the second respondent drove the vehicle bearing Registration Number TN 58 AF 2597 (TATA INDICA CAR) in a rash and negligent manner and dashed the claimant from behind. Due to that, the claimant sustained multiple injuries, for which, he filed a claim petition before the Motor Accident Claims Tribunal, Subordinate Judge, claiming compensation. The appellant / Insurance Company with which the offending vehicle is insured, resisted the claim. Considering the oral and documentary evidence adduced on either side, the Tribunal fixed the liability on the appellant and



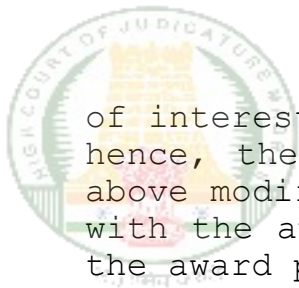
directed to pay compensation of Rs.4,03,602/- to the 1st respondent/claimant with 9.5% interest per annum. Aggrieved by the said award, the Insurance company has filed this appeal questioning quantum of compensation.

3. Learned counsel for the appellant would submit that though the first respondent/claimant suffered fracture on hip, he was admitted in the Hospital as an inpatient only for 10 days and incurred only Rs.14,890/- towards medical expenditure. While so, the Tribunal has excessively awarded a sum of Rs.50,000/- towards future medical expenses and therefore, it has to be reduced. It is further contended that since the injury was simple in nature, Rs.1,80,000/- awarded by the Tribunal towards pain and sufferings is on the higher side. Further, the Tribunal has awarded exorbitant compensation under other heads, without any evidence and the rate of interest at 9.5% p.a. awarded by the Tribunal is also on the higher side. Thus, he prayed for reduction of the quantum of compensation.

4. Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record.

5. A perusal of record shows that due to accident, the claimant has sustained fracture on his hip, for which he underwent a surgery in a private hospital. The petitioner had been hospitalized as an inpatient for 10 days ie. from 26.06.2016 to 05.07.2016. The claimant has produced the medical bills only for Rs.14,890/-. As per Ex.C1, the Medical Board has assessed the disability sustained by the claimant as 25% partial permanent disability. The claimant was stated to be working as a Road Worker in the Highways Department before the accident. The Tribunal has fixed Rs.3,000/- per percentage of disability and thus, awarded Rs.75,000/- towards partial permanent disability.

6. In view of the above and also considering the nature of the injuries sustained by the claimant, this Court is of the view that Rs.1,80,000/- awarded by the Tribunal under the head of Pain and Sufferings is excessive and hence, the same is reduced to Rs.50,000/-. It is seen that the Tribunal has awarded Rs.50,000/- towards Future Medical Expenses only by relying on a decision of this Court in **United India Insurance Company Limited Vs. M.Venkatesan**, reported in **2017 (2) TNMAC 112**. It is a settled law that each case has to be decided according to its own case on merits. The Court below has not even stated on what basis Rs.50,000/- is awarded towards Future Medical Expenses in this case. However, considering the nature of the injuries sustained by the claimant, this Court reduces the award passed by the Tribunal towards Future Medical Expenses from Rs.50,000/- to Rs.15,000/-. Further, the rate of interest ie., 9.5% p.a. awarded by the Tribunal is on the higher side. In all the motor accident cases, the award



of interest at the rate of 7.5% p.a. is being uniformly followed and hence, the same is reduced from 9.5% p.a. to 7.5% p.a. Except the above modification, this Court does not find any reason to interfere with the award passed by the Tribunal on the other heads and hence, the award passed by the Tribunal on the other heads are confirmed.

7. Accordingly, the total compensation is modified as hereunder:-

<u>Heads</u>	<u>MCOP</u>	<u>CMA</u>
For loss of earning	=	Rs. 23,665/- Rs.23,665/-
For Transport Expenses	=	Rs. 10,000/- Rs.10,000/-
For extra nourishment	=	Rs. 10,000/- Rs.10,000/-
For damage to cloth and article	=	Rs. 10,047/- Rs.10,047/-
For medical expenses(Hospital bills)	=	Rs. 14,890/- Rs.14,890/-
For future medical expenses	=	Rs. 50,000/- Rs.15,000/-
For other expenses	=	Rs. 10,000/- Rs.10,000/-
For partial permanent disability	=	Rs. 75,000/- Rs.75,000/-
For pain and sufferings	=	Rs.1,80,000/- Rs.50,000/-
For loss of amenities	=	Rs. 10,000/- Rs.10,000/-
For loss of expectation of life	=	Rs. 10,000/- Rs.10,000/-
Total	=	Rs.4,03,602/- Rs.2,38,602/-

8. In view of the above, the award passed by the Tribunal is reduced from Rs.4,03,602/- to Rs.2,38,602/-. The appellant/ Insurance Company is directed to deposit the modified compensation of Rs.2,38,602/- along with interest at 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the entire award amount with interest by



filing a permission petition before the Tribunal.

9. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Aruppukkottai
- 2.The Record Keeper,
V.R.Section,(2 copies)
Madurai Bench of Madras High Court,
Madurai.

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