



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.468 of 2018

and

C.M.P(MD).Nos.5607 & 11976 of 2018

The Oriental Insurance Company Limited
Represented by its Divisional Manager
No.39/40, Saratha Shopping Complex
Simmakkal, Madurai District

...Appellant/Respondent -2

Vs

1.G.Premkumar

...1st Respondent/Petitioner

3.S.Manoj Kumar

...2nd Respondent/1st Respondent

Prayer: Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Decree and Judgment made in M.C.O.P.No.218 of 2015, dated 11.01.2018, on the file of the Motor Accident Claims Tribunal Cum Special Sub Judge, Madurai.

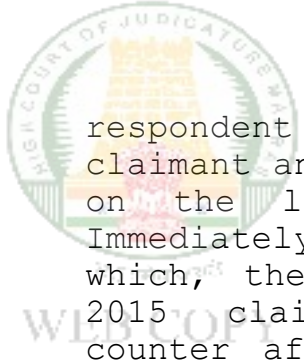
For Appellant : Mr.K.Baskaran

For Respondent No.1 : Mr.M.Sarangan

J U D G M E N T

This appeal has been filed against the award dated 11.01.2018, made in M.C.O.P.No.218 of 2015 on the file of the Motor Accident Claims Tribunal Cum Special Sub Judge, Madurai.

2.It is the case of the first respondent/claimant that on 02.11.2013 at about 3.00 p.m, while the claimant was walking from Kalpalam Road in front of Vaigai Electrical Stores, Goripalayam, Madurai, one motor cycle bearing Registration No.TN 59 AP 5366 driven by its driver, Naveen Kumar, the brother of the 2nd



respondent herein coming in the same direction, dashed against the claimant and in the impact, the claimant sustained grievous fracture on the left leg and multiple injuries all over the body. Immediately, he was admitted in the Rajaji Hospital, Madurai. For which, the first respondent/claimant has filed M.C.O.P.No.218 of 2015 claiming compensation of Rs.4,00,000/-. The appellant filed counter affidavit denying the involvement of the vehicle insured with them. They also disputed the age, avocation, income of the injured and compensation claimed under various heads.

3.Considering the oral and documentary evidence adduced on either side, the Tribunal held that the driver of second respondent vehicle was responsible for the accident and directed the appellant to pay compensation of Rs.2,22,000/- with 7.5% interest per annum from the date of petition till the date of deposit. Aggrieved by the said award, the appellant has filed this appeal challenging the quantum.

4.Heard the learned counsel for the parties and perused the materials available on record.

5.The learned counsel for the appellant would state that the competent Medical Board constituted in Government Rajaji Hospital, Madurai has clearly given a finding that ' the patient has got no disability, whereas, the learned Tribunal has fixed a sum of Rs. 84,000/- (28*3000) for disability factor, based on the testimony of a private practitioner, Dr.S.Shanmugam (P.W.3), who has certified that 'the partial permanent disability of the petitioner is 28%. The learned counsel further stated that the disability factor is unacceptable and the Tribunal ought to have found that there is no functional disability for the injured claimant. Hence, he prayed before this Court to set aside the award passed by the Tribunal.

6.on going through the records, this Court doubted the assessment of disability percentage and therefore, this Court by order dated 10.06.2019, once again referred the matter to the Medical Board to assess the disability of the claimant. After assessing disability of the the first respondent/claimant, the Medical Board, Madurai sent a report to this Court, wherein, it is stated that the partial disability of the first respondent/claimant is 10%. Therefore,the compensation of Rs.84,000/- awarded by the Tribunal for 28% partial permanent disability of the claimant is very high. Therefore, a sum of Rs.3,000/- is hereby awarded for each percentage of disability as per the judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583. Accordingly, a sum of Rs.30,000/- (Rs.3000 x 10%) is hereby awarded towards partial permanent disability. Except the award under the head of partial permanent disability, the compensation under other heads are not interfered with. The overall compensation is awarded as follows:-



Loss of income (Rs.3000*10%)	=	Rs. 30,000/-
Loss of income (treatment period)	=	Rs. 20,000/-
Nutrition Expenses	=	Rs. 5,000/-
Attender Charges	=	Rs. 5,000/-
Medical Expenses	=	Rs. 50,000/-
Transportation Expenses	=	Rs. 2,000/-
Pain and Sufferings	=	Rs. 30,000/-
Loss of Cloths & Articles	=	Rs. 1,000/-
Future Medical Expenses	=	Rs. 25,000/-

Total	=	Rs.1,68,000/-
(Less) Amount awarded by the Tribunal	=	Rs.2,22,000/-

Reduction	=	Rs. 54,000/-

7. In the result, there shall be a reduction of Rs.54,000/- on the quantum. The appellant is directed to deposit the modified compensation of Rs.1,68,000/- with 7.5% interest per annum from the date of claim 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 1st respondent/claimant is permitted to withdraw the entire amount with interest by filing a formal permission petition before the Tribunal.

8. With the above modification, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

The Special Sub Judge,
Motor Accident Claims Tribunal, Madurai.

Copy to:

The Section Officer, (2 Copies)

E.R. Section/V.R. Section,

Madurai Bench of Madras High Court, Madurai.



+1 CC to M/s.K.BHASKARAN, Advocate (SR-80227[F] dated 07/08/2019)

+1 CC to M/s.M.SARANGAN, Advocate (SR-80516[F] dated 08/08/2019)

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