



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD) No.1106 of 2017

and

C.M.P. (MD) No.11262 of 2017

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National Insurance Company Limited,
Represented by its Divisional Manager,
1st Floor, Sreeji Complex,
Bed Ford, Circle,
P.B.No.72, Coonoor, Nilgiris

... Appellant/2nd Respondent

-vs-

1.S.Veerakkumar
2.B.Isaac Magimai Raj

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 16.03.2017 passed in M.C.O.P.No.2177 of 2013 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Trichirappalli.

For Appellant	:	Mr.J.S.Murali
For 1 st Respondent	:	Mr.V.Nirmal Kumar
For 2 nd Respondent	:	Exparte (NDW)(vide in EB)

J U D G M E N T

(Judgment of this Court was delivered by **T.S.Sivagnanam, J.**)

Heard Mr.J.S.Murali, learned counsel appearing for the appellant and Mr.V.Nirmalkumar, learned counsel appearing for the first respondent.

2.This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award of the Motor Accident Claims Tribunal, Trichy in M.C.O.P.No.2177 of 2013, granting an award of Rs.29,89,352/- (Rupees Twenty Nine Lakhs Eighty Nine Thousand Three Hundred and Fifty Two Only) for the injuries sustained by the claimant, in the accident occurred on 08.03.2013. Aggrieved by the said award, dated 16.03.2017, the appellant/Insurance company has filed the present appeal.

3.The appellant herein is the second respondent, the first

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respondent herein is the petitioner and the second respondent herein is the first respondent in the original claim petition. The case of the petitioner in M.C.O.P.No.2177 of 2013 is that on 08.03.2013, at about 10.45 a.m., along the Trichy - Karur National Highways, when the petitioner was about to cross the road and was standing on the left edge of the road, the first respondent drove the car bearing Registration No.TN-37-BD-0989 in a rash and negligent manner dashed against the petitioner and caused him injuries. A compensation of Rs.30,00,000/- (Rupees Thirty Lakhs only) was prayed for by the petitioner.

4.On the side of the respondents, it was stated that the petitioner in an intoxication mood, has suddenly came across the road and he was responsible for the accident. The Tribunal has decided that the accident was due to the rash and negligent driving of the car driver and has awarded a sum of Rs.29,89,352/- as compensation.

7.In the grounds of appeal, it is stated that P.W.2 Doctor after examining the claimant, has assessed the disability as 40% and the Claims Tribunal has committed a grave error and miscarriage of justice in fixing the disability as 100% without any basis. The Tribunal has erred in awarding an inordinately high sum under various heads and that the Tribunal has erroneously awarded three tiers of compensation under the head of loss of income for 40% disability as Rs.3,73,364/-, Rs.18,78,864/- and Rs.4,86,000/- and the award is liable to be interfered in the interest of justice.

8.It is seen that there is no serious objections as to the liability of the appellant. Hence, the decision of the Tribunal regarding to liability is affirmed.

9.In this regard, we find that the Tribunal was right in arriving at a monthly salary as Rs.12,044/-. The claimant should have received this salary till he was relieved from service.

10.The Tribunal has taken into consideration the period of service of the deceased into three periods viz., from 08.03.2013 to 08.10.2015, from 08.10.2015 to 08.03.2023 and thereafter, after attaining the age of superannuation till the age of 70 years. Apart from that, the Tribunal had added the festival advance, bonus and dearness allowance. No document was filed to prove the loss of income during the abovesaid period. There is no documents to prove festival advances, bonus or dearness allowance. The Tribunal has awarded loss of income for the period from the date of superannuation till the claimant attain the age of 70 years without any basis. Hence, it is decided that the compensation given by the Tribunal under the above heads is not correct.



11. Therefore, the loss of income of the injured claimant is recomputed as follows. The annual income of the injured claimant is fixed at Rs.1,44,528/- as fixed by the Tribunal. By applying the multiplier '13', the loss of income will be at Rs.18,78,864/- and hence, the loss of income fixed by the Tribunal is modified as Rs.1,44,528/- x 13 = 18,78,864/- instead of Rs.27,89,382/-.

12. Compensation with regard to other heads viz., for medical expenses Rs.75,000/- for expectation of life Rs.75,000/- and for pain and suffering Rs.50,000/- are confirmed. Hence, the total compensation will be Rs.20,78,864/- (Rupees Twenty Lakhs Seventy Eight Thousand Eight Hundred and Sixty Four only).

13. In the result, this Civil Miscellaneous Appeal is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar (CS)

Mrn/NS

To:

The Motor Accident Claims Tribunal,
Special Subordinate Court,
Tiruchirappalli.

Copy to
The Section Officer, -2 copies
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to MR.J.S.MURALI, Advocate (SR-93257[F] dated 21/10/2019)

+1 CC to MR.V.NIRMAL KUKMAR, Advocate (SR-93723[F] dated 22/10/2019)

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