

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2317 of 2012

The Manager,

ICICI Lombard General Insurance Co. Ltd.

Chotabhai Centre, 2nd& 3rd Floors,

140, Nungambakkam High Road,

Chennai - 600 034.

...Appellant

Versus

1.Sri Ponraj @ Stephenraj

2.V.N.Kumar S/o.Nandagopal

3.A.Anandaraj S/o. Ammavasai

4. The Manager,

Iffco Tokio General Insurance Co. Ltd.

KSCMF Building, 3rd Floor,

3rd Block, No.8, Cinning Road,

Bangalore - 560 052. (or)

The Manager,

Iffco Tokio General Insurance Co. Ltd.

STYRAEAIIC Business Unit, IInd Floor,

No.28, North Usman Road, T.Nagar,

Chennai - 600 017.

...Respondents

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 27.03.2012 made in M.C.O.P.No.64 of 2008 on the file of the Motor Accident Claims Tribunal, First Additional Subordinate Court, Cuddalore.

For Appellant : Mrs.P.T. Ramadevi

For Respondent-1 : Mr. S. Kalyanaram

For Respondent 2-4 : No appearance

J U D G M E N T

The Insurance Company has preferred this appeal against the Judgment and order in M.C.O.P.No.64 of 2008 dated 27.03.2012 on the file of the Motor Accident Claims Tribunal, First Additional Subordinate Court, Cuddalore seeking for reduction of compensation.

2. The brief of the case is as follows:

On 13.09.2007, when the claimant/1st respondent herein travelling in an auto bearing registration No.TN 31 E 4489 insured with the 4th respondent, a lorry bearing registration No.TN 31 H 7996, insured with the appellant herein, hit the auto travelled by the claimant/1st respondent herein, due to rash and negligent driving of the lorry driver. Due to the impact of the accident, the claimant/1st respondent herein sustained grievous injuries thereby he made an claim petition before the Tribunal in M.C.O.P.No.64 of 2008. After trial, he was awarded a sum of Rs.1,54,400/- directing the insurer of the lorry/appellant herein to deposit the aforesaid award amount. Being aggrieved by the award, the Insurance company has preferred the present appeal.

3. The learned counsel for the appellant would submit that the Tribunal has awarded higher amount as compensation to the claimant/1st respondent herein without assessing the income of the claimant/1st respondent herein and injuries sustained by the claimant/1st respondent herein. Hence, this Court may be pleased to award as deemed fit.

4. On the other hand, the learned counsel for the 1st respondent would submit that the appellant was awarded after considering the entire oral and documentary evidence. Hence, there is no need to interfere with the award passed by the Tribunal.

5. Heard, the learned counsel for both parties and perused the entire oral and documentary evidence placed before this Court.

6. The factum and manner of the accident being rash and negligent manner driving of the lorry driver under Section 163-A is not dispute. The compensation awarded by the Tribunal is alone disputed seeking for reduction of compensation after considering the income of the claimant/1st respondent herein, injuries and disability sustained by the claimant/1st respondent herein.

7. On perusal of the award, the Tribunal has confirmed that the accident had happened due to the rash and negligent driving of the driver of the lorry belonging to the 2nd respondent herein which is insured with the appellant Insurance company herein. Accordingly, the claimant/1st respondent was awarded the aforesaid compensation after taking into consideration the reliance on the case of "Sarala Verma". However, if it was stated that the claimant is said to be as Building worker by profession and no supporting documents have been produced before the Tribunal, his income would be considered at Rs.2,500/- instead of Rs.3,000/- as fixed by the Tribunal. Thus, the permanent disability is awarded a sum of 57,000/- ie. Rs.2500 X 12 X 10% X 19 =Rs.57,000/- instead of Rs.68,400/-. Accordingly, other heads are reduced whichever is to be applicable as per the details given below:

SL. No.	Particulars	Amount (in Rs.)
1	Permanent disability @10% as stated above	57000.00
2	Pain, shock and Sufferings is reduced as disability @10%	20000.00
3	Extra-nourishment is reduced considering it is higher side	5000.00
4	Medical Expenses is reduced as no records	5000.00
5	Transport expenses is confirmed	10000.00
6	Loss of Income for 2 months	6000.00
Total Amount		103000.00

8. Thus, the compensation awarded by the Tribunal has been reduced by Rs.51,400/- from 1,54,400/- to 1,03,000/- with interest @ 7.5% p.a. from the date of petition till the date of deposit of award amount. The appellant/Insurance Company is directed to deposit the aforesaid award amount within a period of four weeks from the date of receipt of copy of this order after deducting the amount deposited if any.

9. On such deposit, the claimant/1st respondent herein is permitted to withdraw the modified award amount by filing formal application before the Tribunal.

10. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified in M.C.O.P. No.64 of 2008 dated 27.03.2012. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:

The Motor Accident Claims Tribunal,
First Additional Subordinate Court,
Cuddalore.

Copy to

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Kalyanaraman, Advocate Sr.10344

C.M.A.No.2317 of 2012

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