

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.08.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2145 of 2013
&
M.P.No.1 of 2013

Branch Manager,
Iffco Tokiya General Insurance Co. Ltd.,
Tulso Chambers, III Floor,
195, TV Samy Road (West),
RS Puram, Coimbatore. ... Appellant/2nd respondent

Vs

1.Chandran ...Ist respondent/Petitioner
2.A.Gopalakrishnan ...2nd Respondent/Ist respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in MCOP.No.1007 of 2010, dated 27.09.2012 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Judge, Tiruppur.

For Appellant : Mr.E.Rajadurai
for Mr.N.Vijayaraghavan
For Respondent 2 : No appearance
Not ready in notice regarding R1

J U D G E M E N T

(This Appeal has been taken up for hearing through Video Conferencing)

This appeal has been filed by the insurance company challenging the award dated 27.09.2012 passed by the Motor Accident Claims Tribunal (II Additional District and Sessions Judge, Tiruppur in MCOP.No.1007 of 2010.

2. The Appellant insurance company has challenged the impugned award on the ground of its liability as well as they have also challenged the quantum of compensation awarded by the Tribunal.

3. Insofar as the first contention raised by the Appellant is concerned, the same has been duly considered by the Tribunal under the impugned award.

4. Heard Mr.E.Rajadurai, learned counsel representing Mr.N.Vijayaraghavan learned counsel for the Appellant. Despite service of notice on the second respondent, there is no representation on his side.

5. Before the Tribunal, the first respondent/claimant has filed seven documents which were marked as Ex.A1 to Ex.A7 and three witnesses were examined on his side namely, the first respondent/claimant himself as PW1, the doctor who examined him as PW2 and an eyewitness to the accident as PW3. On the side of the Appellant insurance company, neither any document was filed nor any witness examined, before the Tribunal.

6. The Tribunal has given a finding under the impugned award that there is 90% contributory negligence on the part of the driver of the insured car and 10% contributory negligence on the part of the first respondent/claimant who was the rider of the motor cycle. The Tribunal in paragraph 6 of the impugned award has observed that the accident had happened in a junction road. The rider of the motorcycle who is the first respondent/claimant was also responsible for the cause of the accident and accordingly, fixed his contributory negligence at 10% and fixed the contributory negligence of the insured car at 90%. Since the Appellant/ insurance company has not adduced any evidence before the Tribunal to rebut the said finding of the Tribunal with regard to the contributory negligence, this court is constrained to accept the findings of the Tribunal as it does not suffer from any infirmity and it has been given based on the materials and evidence available on record.

7. We shall now deal with the second contention raised by the Appellant/Insurance company with regard to the quantum of compensation. The Tribunal under the impugned award has passed the following award:

Heads	Award Amount (Rs.)
Loss of income	5,15,160/- (4,500 x 12 = 54,000 x 53/100 = 28,620 x 18)
Pain and suffering	30,000/-
Medical Expenses	1,24,000/-
Total	6,69,160/-
Less: Contributory negligence at 10%	(-) 66,916/-
Award Amount	6,02,244/-

8. The Tribunal has awarded a sum of Rs.1,24,000/- as compensation towards medical expenses, but erroneously, not included the same in the total of the award amount and arrived the total of the award as Rs.5,45,160/-. In view of the same, the Tribunal directed the Appellant insurance company to pay 90% of the award viz., Rs.4,90,644/- which is also erroneous.

9. The accident happened in the year 2010. The first respondent/claimant in his claim petition had claimed that he was earning Rs.300 per day which works out to approximately Rs.9,000/- per month. The age and avocation of the first respondent/claimant has also not been disputed by the Appellant/insurance company by adducing any contra evidence.

10. The first respondent/claimant has sustained the following injuries namely head, left leg fracture, lower 4 tooth left, pelvis fracture and injuries all over the body. The first respondent/claimant being a labourer (coolie), the injuries sustained by him would have certainly impacted him from doing his regular work as a labourer. The Tribunal has considered the age, avocation and the nature of injuries sustained by the first respondent/claimant and only thereafter, awarded the compensation as per the impugned award.

11. The disability certificate was marked as Ex.A6 before the Tribunal which was given by the doctor (PW2) who was examined as an witness by the first respondent/claimant. As per the said disability certificate, the doctor has assessed the disability of the first respondent/claimant at 58%. However, the Tribunal has assessed the same by reducing the disability to 53%. After giving due consideration to the materials and evidence available on record, this Court is of the considered view that the compensation awarded by the Tribunal to the first respondent/claimant under various heads as indicated earlier is a just compensation and there is no scope for reduction.

12. In the result, there is no merit in this Appeal. Accordingly, this Appeal shall stand dismissed. The Appellant / Insurance Company is directed to deposit the award amount i.e., Rs.6,02,244/- together with interest from the date of claim petition till the date of realization and cost as awarded by the Tribunal after deducting the amount already deposited to the credit of M.C.O.P. No.1007 of 2010 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer

the award amount directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

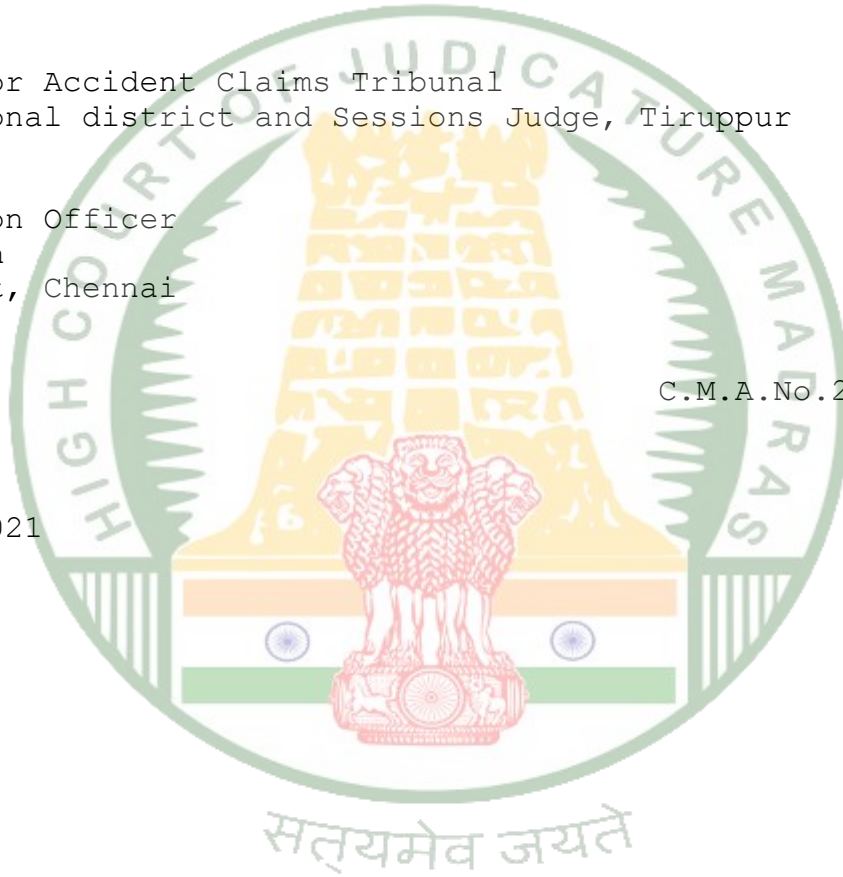
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To
1.The Motor Accident Claims Tribunal
II Additional district and Sessions Judge, Tiruppur

Copy to
The Section Officer
VR Section
High Court, Chennai

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