

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.18.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2393 of 2013

&

M.P.No.1 of 2013

The ICICI Lombard General

Insurance Company Limited,

'Zineeth House'

Kesavarao Kadhe Mark Race Course (Opposite)

Mahalakshmi,

Mumbai - 400 034.

... Appellant/2nd
Respondent

vs.

1.R.Rajagopal

...Respondent/Claimant

2.S.Jayashree

....Respondents/1st Respondent

(R2 set exparte in lower court)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 10.04.2012 made in MCOP.No.535 of 2009 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) at Sankari.

For Appellant : Mrs.R.Sree Vidhya
Batta with petitions and enclosures due regarding R1 & R2

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the Appellant insurance company challenging the impugned award dated 10.04.2012 passed by the Motor Accident Claims Tribunal (Subordinate Judge, Sankari) in MCOP.No.535 of 2009.

2. The Appellant/insurance company has challenged the impugned award only on the ground that the compensation awarded by the Tribunal under the impugned award to the claimant is excessive. It is their contention that the Tribunal ought not to

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have applied the multiplier method while assessing the disability compensation payable to the claimant.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of income	3,79,440/- (3000 x 12 x 17 x 62)
Pain and suffering	25,000/-
Medical expenses	86,700/-
Extra nourishment	20,000/-
Attender charges	5,000/-
Transportation	5,000/-
Loss of amenities	5,000/-
Total	5,26,140/-
Rounded off to	5,25,000/-

4. The claimant sustained injuries as a result of an accident which occurred on 08.03.2009 caused by a vehicle owned by the second respondent and insured with the Appellant. He preferred a claim before the Motor Accident Claims Tribunal seeking compensation for the injuries sustained by him and the Motor Accident Claims Tribunal passed the aforementioned award and directed the Appellant as well as the second respondent jointly and severally to pay the assessed compensation to the first respondent/claimant.

5. The adverse finding of negligence on the part of the driver of the insured vehicle has not been disputed as seen from the grounds of appeal filed by the Appellant/insurance company before this Court. The only contention raised by the Appellant/insurance company is that the quantum of compensation awarded by the Tribunal is excessive.

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6. The claimant was a cleaner, aged 19 years and in his claim petition, he had claimed that he was earning Rs.5,000/- per month at the time of the accident. However, the Tribunal has assessed his monthly income at Rs.3,000/-.

7. The claimant sustained the following injuries namely (a) laceration wound in right thigh, (b) laceration over right leg, (c) laceration over upper right leg, (d) laceration over right leg, (e) laceration over lower right ankle, (f) multiple laceration in right arm, ear and head and (g) fracture in right femur, right leg and ankle as a result of the accident.

8. Before the Tribunal, the claimant has filed sixteen documents which were marked as Ex.P1 to Ex.P16 and three witnesses were examined on his side namely the claimant himself as PW1, an eyewitness to the accident as PW2 and the Doctor who examined him as PW3. On the side of the Appellant/ insurance company, neither any document was filed nor any witness examined.

9. The Doctor who examined the claimant has assessed the disability of the claimant at 62%, after considering the fact that the claimant was hospitalised and has sustained three fractures as indicated supra. As a cleaner, he would have certainly been unable to do his regular employment in view of the grievous injuries sustained by him due to the accident. The Tribunal has rightly applied the multiplier method while assessing the disability compensation payable to the claimant.

10. The claimant was 19 years old at the time of the accident which has not been disputed by the Appellant insurance company before the Tribunal. The Tribunal has also rightly applied the 17 multiplier for the said age and has assessed the disability compensation payable to the claimant. Eventhough the assessment of notional monthly income of the claimant at Rs.3,000/- by the Tribunal is low, the same is confirmed by this Court, since the disability compensation assessed by the Doctor at 62% is on the higher side in view of the fact that the whole body assessment was not assessed by the said Doctor. If the whole body disability was assessed, the said disability would have been reduced. But however, considering the overall compensation awarded by the Tribunal towards disability suffered by the claimant, this Court is of the considered view that the disability compensation awarded by the Tribunal is a just compensation and it does not call for any interference.

11. Insofar as the compensation awarded by the Tribunal under various other heads as indicated in the earlier part of

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this Judgment is concerned, the same is a just compensation and it also does not call for any interference.

Conclusion:

12. For the foregoing reasons, there is no merit in this Appeal. Accordingly, this Appeal is dismissed. The Appellant as well as the second respondent who is the owner of the insured vehicle are jointly and severally directed to deposit the award amount along with interest and costs, after deducting the amount already deposited if any to the credit of MCOP.No.535 of 2009 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 along with accrued interest lying to the credit of MCOP.No.535 of 2009 to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
The Subordinate Judge,
Subordinate Court, Sankari.

2.The Section Officer,
VR Section, High Court,
Chennai.

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