



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1824 of 2016

and

C.M.P.No.13434 of 2016

The Divisional Manager,
M/s. New India Assurance Co.Ltd.,
Divisional Office,
Charishma Centre, 2nd Floor,
Mumbai.

... Appellant/2nd Respondent

/versus/

1. Mr.S.Sakthi

... Respondent/Petitioner

2. Mr.Ramdas Wanve

... Respondent/1st Respondent

3. M.Kumar

... Respondent/3rd Respondent

4. The Branch Manager,
HDFC ERGO, General Insurance Co.Ltd.,
Coimbatore.

... Respondent/4th Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgement and Decree passed in M.C.O.P.No.801 of 2013, dated 03.07.2015 (Special Subordinate Judge) at Krishnagiri District.

For Appellant : Mr.J.Chandran

For Respondents : Mr.C.Prabakaran for R1.
Mr.E.Rajadurai for R4.
R2 & R3 - Exparte



J U D G M E N T

(The case has been heard through video conference)

This appeal is preferred by the Insurance company aggrieved by the quantum of compensation awarded to the victim who sustained injuries in the accident. On perusing the award and the evidence relied by the claimant, this Court finds that the victim is a lorry driver aged 23 years who met with an accident, while he was driving his lorry from Ediuri, Karnataka State to Chitradurga. In the said accident, the claimant had sustained fracture in the right shaft of femur.

2. The Tribunal has applied the multiplier, since the injuries has caused functional disability to the claimant. The learned counsel appearing for the appellant/Insurance Company would submit that the percentage of disability assessed by the tribunal, is not in consonance and correspondence to the injury sustained by the victim. The learned counsel would submit that for the fracture of right shaft of femur and for the fracture in right inferior Public ramus, the Tribunal has fixed 40% disability and for other injuries another 20% disability, totalling up together as 60% disability. The Tribunal erred in fixing 60% as functional disability. Further, the loss of income fixed by the tribunal is also obviously improper and erroneous.

3. On perusing the award passed by the Tribunal and the disability certificates issued by Dr.M.Devendran and Dr.A.Krishnan, which have been marked as Exs.P10 & P11, this Court finds that for the fracture of right shaft of femur and for the fracture in the right inferior Public ramus, the disability is assessed as 40% and for the injury sustained on the right eye of the claimant, the tribunal assessed 20% disability. No doubt, the disability assessed by the doctor need not be the same for functional disability. However, taking into consideration that the claimant has to be awarded fair compensation as he met with an accident, while driving, the tribunal has rightly fixed the disability at 60%.

4. Hence, this Court is of the opinion that the award of Rs.10,32,944/- is just and adequate, taking note of the additional fact that the Tribunal has fixed only Rs.5,000/- as monthly income without any adequate future prospects, this Court is of the opinion that it is not on the higher side. The Tribunal has fixed the liability between the 2nd and 4th respondents therein in the ratio of 55:45 and this Court confirms the same.

5. In the result, the award of the Tribunal dated 03.07.2015 passed in M.C.O.P.No.801 of 2013 is confirmed and



Civil Miscellaneous Appeal is dismissed with costs.

6. It is reported that 45% of liability fixed on the 4th respondent therein/Insurance Company has already been deposited with interest and the same has been withdrawn by the claimant. The second respondent therein, who is the appellant herein, is directed to deposit the balance 55% of the award amount fixed by the Tribunal with interest within a period of twelve weeks from the date of receipt of copy of this order. On such deposit the claimant is permitted to withdraw the same. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

kmm

To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court, Krishnagiri District.
2. The Section Officer,
V.R.Section,
High Court, Chennai - 104.

+1cc to Mr.C.Prabakaran, Advocate, SR.No.33727

C.M.A.No.1824 of 2016
and
C.M.P.No.13434 of 2016

PP (CO)
RLP (04/08/2021)