

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.692 of 2015

M.P.No.1 of 2015

The Oriental Insurance Company Limited,
Branch Office, A.A.Complex,
First Floor, 159, Kumaran Road,
Tiruppur.

..Appellant/3rd Respondent

Vs.

1.Ponraj
2.Abdul Salam
3.Nasar

..Respondents/ Petitioner/ Respondents1 & 2

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 21.04.2014 made in M.C.O.P.No.587 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Tiruppur.

For Petitioner : Mr.S.Arunkumar
For Respondents : Mr.Ma.Pa.Thangavel for R1
Non-appearance for R3
R2-not ready in notice

J U D G M E N T

The appeal on hand is preferred against the judgment and decree dated 21.04.2014 made in M.C.O.P.No.587 of 2012 on the file of the Motor Accidents Claims Tribunal, II Additional District Judge, Tiruppur.

2. The appeal is filed by the Oriental Insurance Company Limited mainly on the ground that the Tribunal has committed an error in holding that the driver of the lorry was responsible for the accident. The quantum of compensation was awarded by the Tribunal is also challenged on the ground that it is an exorbitant and not in commensuration with the nature of the accident as well as the injuries sustained by the claimant. The claimant has committed an error in relying on Ex.P6 and the amount of Rs.1,00,000 awarded for pain and suffering is also excessive.

3. The learned counsel appearing on behalf of the appellant contended that it is a case of an injury, therefore, the application of multiplier method is improper.

4. The learned counsel appearing on behalf of the first respondent/claimant opposed the contention by stating that the nature of injury caused permanent disability to the first respondent/claimant and the said permanent disability was assessed at 42% by the Doctor, P.W.4. The said factum was established before the Tribunal and the permanent disability caused permanent loss of income to the claimant as he was working as a driver and he is disabled from performing his duty and the said factor was also considered and a finding to that effect was arrived by the Tribunal and accordingly, there is no infirmity or perversity in respect of award granted.

5. On perusal of the award, it is clear that as per P.W.2, the claimant/first respondent sustained permanent disability and the Doctor has deposed that it would be difficult for him to perform the job as a driver. When the Doctor/P.W.2 deposed that the claimant is not in a position to perform his job as a driver, then the tribunal is right in granting the compensation by applying multiplier. This apart, the injury caused shortening of legs by three inches to the first respondent/claimant and this Court is of the considered opinion that three inches rejection in leg will certainly cause a permanent disability, more specifically, for a driver, for whom the usage of both legs are of paramount importance. This being the facts and circumstances and in respect of accident as well as the policy details, there is no dispute between the parties. Therefore, this Court is of the considered opinion that the Tribunal has not committed any infirmity or perversity as such and accordingly, no further interference is called for. Accordingly, the judgment and decree dated 21.04.2014 passed in M.C.O.P.No.587 of 2012 is confirmed and consequently, Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

6. The learned counsel appearing on behalf of the appellant brought to the notice of this Court that the full award amount had already been deposited, out of which, the first respondent/claimant was permitted to withdraw 50% of the award amount. Thus, the first respondent/claimant is permitted to withdraw the balance amount with accrued interest by filing an appropriate application before the Tribunal and the payments are to be made through RTGS.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssb

To

The Motor Accidents Claims Tribunal,
II Additional District Judge, Tiruppur.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.Ma.Pa.Thangavel , Advocate SR.No. 18571

+lcc to Mr.S.Arun kumar , Advocate SR.No. 18812

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A.SK(19.04.2021)



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