

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3365 of 2013

and

MP.No.1 of 2013

D.M., The New India Assurance Co. Ltd.,
Cuddalore - 607 001.

...Appellant/2nd Respondent

vs.

1.R.Nagarathinam ...1st Respondent/Petitioner

2.S.Perumal2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 28.09.2012 passed in M.C.O.P.No.618 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellant : Mr.K.Vinodh
for Mrs.Elveera Ravindran

For Respondents: R1 - served, name printed -
No appearance
R2 - Exparte

J U D G M E N T

The New India Assurance Company, the second respondent in MCOP.No.618 of 2008 on the file of the Principal Subordinate Judge, Cuddalore has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The first respondent / claimant filed the claim petition under Section 163 - A of the Motor Vehicles Act, 1988 and Rule 1 of MACT Rules praying to award compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 18.11.2007.

3. The case of the first respondent / claimant is that on 18.11.2007, at about 06.30 am, he was travelling as a pillion rider in a motorcycle bearing Registration No.TN 31 C 8521 on Cuddalore - Panruti road at Vazhapattu and at that time, the rider of the said motorcycle rode the vehicle in a rash and negligent manner, as a result of which, the first respondent /

claimant was thrown away and sustained grievous injuries. Therefore, he filed MCOP.No.618 of 2008 seeking compensation for the injuries sustained by him.

4. The learned Principal Subordinate Judge, Cuddalore after analysing the documents and evidences on record, awarded a compensation of Rs.3,46,700/- together with interest at the rate of 7.5% per annum to the first respondent / claimant. Challenging the said award dated 28.09.2012 passed in M.C.O.P.No.618 of 2008, the appellant / Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

5. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal erred in holding that the first respondent / claimant sustained disability at 60%. He further submitted that the Tribunal wrongly awarded huge compensation of Rs.3,08,800/- for future loss of income due to the alleged injuries sustained by the first respondent / claimant. He also prayed for reducing the compensation under other heads.

6. Though notice was ordered to the respondents and served on them as early as on 24.10.2013 and names have been printed in the cause list, there is no representation for them either in person or through learned counsel. Considering the paucity of time, this Court is inclined to take up the present appeal.

7. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record.

8. A perusal of a copy of the Accident Register (Ex.P4), shows that the first respondent / claimant sustained fracture of left femur lower 1/3. Dr.Venugopal (PW2) had also confirmed the above fracture and had further deposed before the Tribunal that the bones are malunited and left knee movement is restricted. The Doctor had assessed the disability at 60%. In the claim petition, it is contended that the first respondent / claimant was aged 45 years, self-employed (casuarina merchant), earning a sum of Rs.3,300/- per month. The Tribunal fixed the monthly income of the injured as Rs.3,300/- and adopted multiplier method for awarding compensation under the head loss of future income. However, this Court after considering the materials on record, is of the opinion that the injuries sustained by him will not affect his earning capacity and hence Rs.3,08,800/- granted by the Tribunal towards loss of future income is hereby vacated. Instead, the disability is taken up at 60% as assessed by the Doctor and Rs.2,000/- per percentage of disability is awarded, since the accident is of the year 2007. Hence, Rs.1,20,000/- is awarded under the head partial permanent

disability. The compensation awarded by the Tribunal under other heads are just and reasonable and this Court is not inclined to interfere with the same. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Loss of future income	3,08,800	Nil
2	Partial permanent disability	Nil	1,20,000
3	Loss of income for 3 months	9,900	9,900
4	Transportation	5,000	5,000
5	Extra nourishment	5,000	5,000
6	Medical expenses	5,000	5,000
7	Pain and sufferings	10,000	10,000
8	Cost of attendant	3,000	3,000
	Total	Rs.3,46,700/-	Rs.1,57,900/-

9. In the result, this Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,46,700/- is hereby reduced to Rs.1,57,900/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.618 of 2008 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Cuddalore within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is permitted to withdraw the excess amount, lying in the deposit to the credit of MCOP.No.618 of 2008, if the award amount has already been deposited by them. No costs. Consequently, the Miscellaneous Petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Principal Subordinate Judge,
Cuddalore.

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

+1 Cc to Mr. Elveera Ravindran, Advocate sr 10080.

C.M.A.No.3365 of 2013
and
MP.No.1 of 2013

PA (CO)
SP(23/04/2021)



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