

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3574 OF 2013

Branch Manager,
Royal Sundaram General Insurance Co. Ltd.
No.176, D & E Tiruvananthapuram Road,
Tirunelveli ... Appellant/2nd Respondent

Versus

1.K.Thirugnanam S/o. Kaliyaperumal
2.P.Anna Sekar, S/o. Pichaiya Nadar,
(2nd Respondent was set exparte
before the Tribunal) ... Respondents/Petitioner/
1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the order and decree dated 29.10.2012 made in M.C.O.P.No.307 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirupur.

For Appellant : Mr.E.Raja durai
(For M.B.Raghavan)

For Respondent-1: No Appearance
R2 - Ex-parte

सत्यमेव जयते
J U D G M E N T

This appeal has been filed by the appellant/Insurance company against the Judgment and order in M.C.O.P.No.307 of 2011 dated 29.10.2012 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirupur.

2. This appeal is filed by the Insurance Company questioning the higher side of compensation awarded to the 1st respondent. The case of the appellant is that on 31.12.2010, when the appellant being driver cum owner of the lorry, bearing registration no.TN 39 AT 0016 was driving near Eppothum Vendran Bus stop, an Van bearing Registration No.TN 69 AB 4204 hit the

aforesaid lorry whereby the lorry driver/1st respondent herein has sustained grievous injuries in the accident. Due to the injuries, the Lorry's driver/1st respondent approached the Tribunal for compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only). After trial, the Tribunal has awarded a sum of Rs.9,79,170/- (Rupees Nine Lakhs Seventy Nine Thousand One Hundred and Seventy Only) to the claimant/1st respondent herein.

3. Being aggrieved by the award passed by the Tribunal, the Insurance Company has filed the present appeal contesting the award amount of compensation.

4. The learned counsel for the appellant would submit that the the quantum of compensation is on higher side not in consonance with the facts and circumstances of the case and seeks to pass appropriate award amount to the 1st respondent herein.

5. There is no representation on the side of the 1st respondent herein and the 2nd respondent was set ex-parte before the Tribunal as well as before this Court.

6. Heard the learned counsel for the appellant/Insurance Company and perused the available materials on records.

7. Before the Tribunal, P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P13 were marked on the side of the 1st respondent. None was examined and no exhibits were marked on the side of the appellant before the Tribunal.

8. The factum of the accident and the manner of the accident being rash and negligence on the part of the van driver bearing registration no.TN 69 AB 4204 according to the findings of the Tribunal and entitlement of the claimant/1st respondent herein for compensation under Section 163A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

9. After going through the oral and documentary evidence of P.W.3, Doctor, coupled with the Ex.P12, disability certificate, the Tribunal has fixed the permanent disability @ 69% adopting multiplier of 16. On perusal of the evidence P.W3 and Ex.P12, it is seen that the disability of the 1st respondent has been assessed on various types. i.e. @ 30% for reduction of movement, @ 60% for reduction of stiffness and @2% for non-joint of bone whereas this Court is of the considered view to fix the disability @ 50% over all instead of 69% fixed by the Tribunal since the permanent disability has not fixed over and all and income of the deceased at Rs.6,000/-p.m. adopting the correct multiplier of 15. Accordingly, the 1st respondent/claimant is

entitled for the compensation as details given below:

$$\text{" Rs.6000 X 12 X 50\% X 15 = Rs.5,40,000/-"}$$

As the Tribunal has awarded a sum of Rs.60,000/- for Pain, sufferings & Mental agony, this Court is of the considered view that the same is awarded on the higher side and hence taking into consideration the fact that the surgery has been performed and the same would have been recovered quickly, it is reduced to Rs.40,000/- from Rs.60,000/-. Further, the appellant is already awarded a sum of Rs.5,40,000/- under the head of loss of income and permanent disability @50%, this Court is not inclined to award separately under the head of loss of income during the treatment. Hence, it is waived from the award passed by the Tribunal. At the same time, as the appellant would have been cared of by his family members and others, attendant charges a sum of Rs.10,000/- is added extra among other heads. Except, the said modification, the award passed by the Tribunal under the others heads stands confirmed. Thus, other heads inclusive of the compensation under the head of permanent disability are modified as per the details given below:

Sl. No.	Particulars	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of Income and Permanent Disability @50%	7,94,880.00	5,40,000.00
2	Pain, sufferings & Mental agony	60,000.00	40,000.00
3	Medical Expenses	48,290.00	48,300.00
4	Loss of amenities	20,000.00	20,000.00
5	Extra-Nourishment	10,000.00	10,000.00
6	Transport Expenses	10,000.00	10,000.00
7	Loss of earning during the treatment	36,000.00	---
8	Attendant Charges	---	10,000.00
Total Amount		9,79,170.00	6,78,300.00

10. Thus, the compensation awarded by the Tribunal has been reduced by Rs.3,00,870/- from Rs.9,79,170/- to Rs.6,78,300/- with interest @ 7.5% per annum from the date of petition till the date of deposit of the amount. The Appellant/Insurance Company is directed to deposit the modified award amount of Rs.6,78,300/- within a period of four weeks from the date of receipt of copy of this order less already deposited amount if

any as per the directive of this Court's Order. If the Insurance company has deposited more than the award amount awarded by this Court, it is entitled to withdraw the balance amount after adjusting the present award amount passed by this Court from the Tribunal. The 1st respondent/claimant is permitted to withdraw the modified award amount by filing formal petition before the Court below.

12. In the result, the appeal is partly allowed, modifying the award in M.C.O.P. No.307 of 2011 dated 29.10.2012 passed by the Tribunal. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

lbm

Copy To:

1. Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Tirupur.
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.15764

C.M.A.No.3574 of 2013

SR(CO)
CS/25/01/2021

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