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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.1352 OF 2020
AND
C.M.P.NO.9794 OF 2020

Royal Sundaram General Insurance Co.Ltd.,
Chennai. ...Appellant/2nd Respondent

vs

1. Babu
S/o.Rengadoss ... 1st Respondent/Petitioner
2. Sadhasivam
S/o.Mottaiyan ... 2nd Respondents/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.09.2019 passed in M.C.O.P.No.513 of 2017 on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Cuddalore at Virudhachalam.

For Appellant : Mr.G.Vasudevan

For Respondents: Mr.P.Thamizhendhi [R1]

JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conference.

2. Challenging the award passed by the Tribunal in and by its judgment dated 10.09.2019 passed in M.C.O.P.No.513 of 2017 on the file of Motor Accident Claims Tribunal, III Additional District and Sessions Court, Cuddalore, Virudhachalam, appellant insurance company has filed the present appeal.



3. The brief facts of the case is as follows:

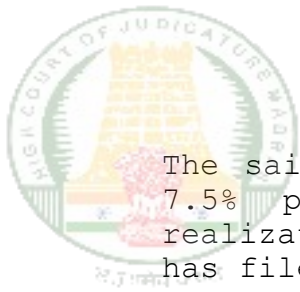
First respondent is the claimant. On 26.07.2017 at about 15.20 hours, while the first respondent/claimant was riding his Motor Cycle bearing Registration No.TN-31-AV-5983 on the Karuvepilankurichi - Vridhachalam Main Road, a Lorry bearing registration No.TN-32-M-9522, belonging to second respondent and insured with the appellant insurance company, came in a rash and negligent manner and dashed against the motor cycle, owing to which the first respondent/claimant sustained grievous injuries all over the body and his right hand was amputated. First respondent/claimant filed a claim petition seeking compensation in a sum of Rs.1,10,00,000/-.

4. The claim was resisted by appellant insurance company by filing a detailed counter.

5. To prove his case, on the side of first respondent/claimant, he examined himself as PW-1 and marked 17 documents. The disability certificate of first respondent/claimant was marked as Ex.X1. On the side of appellant insurance company, none were examined and no documents were marked.

6. On appreciation of materials on record, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the Lorry belonging to second respondent and held that the appellant insurance company, as insurer of the Lorry, was liable to pay compensation. The compensation awarded by the Tribunal is as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent disability and loss of earning capacity	22,68,000/-
2.	Fixing of artificial hand	7,00,000/-
3.	Pain and suffering	1,00,000/-
4.	Medical Expenses	71,336/-
5.	Nutrition	50,000/-
6.	Attendant charges	50,000/-
7.	Future Medical Expenses	50,000/-
8.	Transport Expenses	10,000/-
	Total	32,99,336/-



The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of realization. Challenging the same, appellant insurance company has filed the present appeal.

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7. Learned counsel for appellant insurance company submits that though it was the claim of first respondent/claimant that he was running a 'Beeda Kadai and Sweet Stall' and was earning Rs.9,000/- p.m., no proof was produced to establish the same. The Tribunal fixed the monthly income of first respondent/claimant at Rs.9,000/- p.m. In the absence of any proof, fixing of monthly income at Rs.9,000/- is very much on the higher side. The Tribunal ought to have fixed the monthly income of first respondent/claimant at Rs.5,000/-. Submitting as above, learned counsel prays this Court to fix the monthly income of first respondent/claimant at Rs.5,000/- and accordingly, re-calculate the compensation awarded under the head 'permanent disability and loss of earning capacity'. Learned counsel further submits that the amount awarded under the other heads is also on the higher side and the same requires proper reduction.

8. Per contra, learned counsel for first respondent/claimant made his submissions supporting the award passed by the Tribunal.

9. This Court has considered the rival submissions. Perused the material on record.

10. In the claim petition, the first respondent/claimant had mentioned that he was running a 'Beeda Kadai and Sweet Stall' and was earning Rs.20,000/- p.m. Considering the fact that the accident had occurred in the year 2017 and the cost of living during the relevant period, fixing of Rs.9,000/- as the monthly income by the Tribunal cannot be found fault with even in the absence of any proof. Taking into account the fact that as a consequence of the accident, the right hand of first respondent/claimant was amputated as also the nature of avocation, the Tribunal had added 40% with the monthly income towards future loss of earning capacity. The Tribunal, by fixing the disability at 100% and applying multiplier '15', had awarded a sum of Rs.22,68,000/- [$12,600 * 12 * 15 * 100\%$] as compensation under the head 'permanent disability and loss of earning capacity'. Considering the nature of injury suffered by first respondent/claimant, this Court finds no error in the approach adopted by the Tribunal in awarding compensation under the head 'permanent disability and loss of earning capacity'. Moreover, the Tribunal had awarded compensation only in accordance with the principles laid down by the Hon'ble Apex Court and various judgments of the High Courts. Considering the nature of injury and the long duration of treatment undergone by first respondent/claimant, this Court finds that the amount



awarded under the other heads is also justifiable. Therefore, this Court finds no infirmity in the award passed by the Tribunal.

11. Learned counsel for first respondent/claimant submits that the first respondent/claimant has filed a cross-objection seeking enhancement of compensation and the same is yet to be numbered. Learned counsel undertakes to withdraw such petition as not pressed.

12. The said submission of learned counsel for first respondent/claimant is recorded.

In the result, the Civil Miscellaneous Appeal is dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gm

To

The III Additional District and Sessions Court,
Motor Accident Claims Tribunal,
Cuddalore at Virudhachalam.

C.M.A.No.1352 of 2020

RSI (CO)
CS/31/08/2021