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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.Nos. 1558, 1915 & 1916 of 2020
and

C.M.P. Nos. 11523, 14160 & 14162 of 2020

M/s. New India Assurance Company Ltd.,
No.128A, Thiru-vi-ka Road,
Villupuram,
Villupuram Dt.

...Appellant
in all C.M.A.s

Vs.

1. Mr.A.Chinnasamy,
S/o. Annamalai,
Ko.Ponneri Village,
Vriddhachalam Tk.,
Vriddhachalam.

2. A.Bakrudeen,
S/o. Abdul Hameed
No.52-A/32-A,
Indira Nagar,
Vriddhachalam.

...Respondents in
C.M.A. No.1558/2020

PRAYER:- Civil Miscellaneous Appeal preferred under
Section 173 of Motor Vehicles Act against the award and
decree in M.C.O.P. No.420 of 2011, dated 30.07.2019 on the
file of the Motor Accident Claims Tribunal, III
Additional District and Sessions Judge, Cuddalore.

1. Anbazhagan,
S/o. Dharuman,
Ko.Ponneri Village,
Vriddhachalam Tk.,
Vriddhachalam.



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2. A.Bakrudeen,
S/o. Abdul Hameed
No.52-A/32-A,
Indira Nagar,
Vriddhachalam.

...Respondents in
C.M.A. No.1915/2020

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the award and decree in M.C.O.P. No.429 of 2011, dated 17.11.2017 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Vriddhachalam at Cuddalore.

1. Kamaraj,
S/o. Adhimoolam,
Ko.Ponneri Village,
Vriddhachalam Tk.,
Vriddhachalam.

2. A.Bakrudeen,
S/o. Abdul Hameed
No.52-A/32-A,
Indira Nagar,
Vriddhachalam.

...Respondents in
C.M.A. No.1916/2020

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the award and decree in M.C.O.P. No.426 of 2011, dated 17.11.2017 on the file of the Motor Accident Claims Tribunal, III Additional District and Sessions Judge, Vriddhachalam at Cuddalore.

For Appellant : Mr.R.Neethi Perumal
in all C.M.A.s

For Respondents : No appearance

C O M M O N J U D G M E N T

These Civil Miscellaneous Appeals have been filed by the Insurance Company, challenging the award passed by the Motor Accidents Claims Tribunal, III Additional District and Sessions Judge, Cuddalore in MCOP Nos.420, 429 and 426 of 2011.

2. All the three appeals are arising out of three claim petitions filed by the claimants arising out of the same accident. Hence, all the appeals are disposed of by this common judgment.



3. The case of the claimants before the Tribunal in brief is as follows:-

All the three claimants are loadmen working in a lorry bearing Regn. No.TN-27 U-2184, owned by the 1st respondent, which was insured with the 2nd respondent. On 22.09.2010, after unloading some goods from the lorry, they were sleeping under the lorry, at that time, the driver of the lorry, without noticing the claimants, who are sleeping under the lorry, in a rash and negligent manner moved the lorry, in which the claimants have sustained serious injuries. Hence, claiming a compensation of Rs.4,00,000/- in M.C.O.P.No. 420 of 2011, claiming a compensation of Rs.4,00,000/- in M.C.O.P. No. 429 of 2011 and claiming a compensation of Rs.2,00,000/- in M.C.O.P. No.426 of 2011, the claimants have filed the claim petitions before the Tribunal.

4. The 1st respondent/owner of the vehicle remained exparte. The 2nd respondent insurance company contested the claim petition on the ground that the accident was taken place due to the negligence of the claimants. As all the claimants are sleeping under the parked lorry without informing the driver, without noticing the same, the driver moved the lorry, in which the claimants have sustained minor injuries. Hence, no negligence can be fixed on the driver of the lorry. It is also disputed the monthly income of the claimants, and the compensation claimed by the claimants is excessive and highly speculative.

5. Before the Tribunal, the claimants have examined themselves as P.W.1 to P.W.3 respectively. The claimant in M.C.O.P.No. 420 of 2011 has marked as many as 7 documents as Ex.P1 to P7 and the disability certificate was marked as Ex.C1. The claimants in M.C.O.P.Nos.426 and 429 of 2011 have marked 10 documents as Ex.P1 to P10. On the side of respondent, no witness was examined and no document was marked.

6. The Tribunal, after considering the materials available on record, has come to a conclusion that the accident has been taken place due to the rash and negligent driving of driver of a lorry. Considering the nature of injury, the Tribunal has awarded a sum of Rs.2,23,500/- in M.C.O.P.No.420 of 2011, awarded a sum of Rs.4,00,000/- in M.C.O.P.No. 429 of 2011 and awarded a sum of Rs.20,000/- in M.C.O.P.No.426 of 2011. Aggrieved over the same, the insurance company has filed this appeal before this Court.

7. Mr.R.Neethi Perumal, learned counsel appearing for appellant insurance company would contend that the accident was



taken place due to the negligence of the claimants and admittedly, they are sleeping under the lorry without informing the driver and sustained injury. Hence, the driver cannot be blamed and the claimants have also contributed to the accident. The Tribunal, without considering the same, fixed the entire negligence on the driver of a lorry. So far as the quantum of compensation, according to the learned counsel, for the simple injury sustained by the claimant in M.C.O.P.No.429 of 2011, the Tribunal has awarded a sum of Rs.4,00,000/- as compensation, wherein the disability was 35% partial permanent disability and wherein, the Tribunal has applied the multiplier method and awarded a sum of Rs.3,78,000/- towards future loss of earning capacity.

8. I have considered the rival submissions made by the learned counsel appearing for appellant and perused the records carefully.

9. Admittedly, all the claimants are loadmen working in the same lorry and after unloading the goods, due to tiredness, they have slept under the lorry, and they are used to do regularly, at that time, the driver of the lorry, without noticing the same, moved the lorry, in which they have sustained a fracture in legs. Considering the fact that the claimants are employed as loadmen in the lorry, they are not strangers, and they have travelled in the lorry, while so, the driver of the lorry knowing that facts ought to have very careful before moving the lorry. However, the driver of the lorry, without noticing the loadmen sleeping under the lorry. It is usual practice for the loadmen, after unloading to take rest under the stationary lorry, and it is for the driver to work out for the loadmen before taking the lorry. In the said circumstances, no negligence can be fixed on the claimants. The Tribunal also, considering the materials, has rightly fixed the negligence on the driver of a lorry.

10. So far as the quantum of compensation in MCOP.No.420 of 2011 is concerned, the claimant has sustained fracture in the leg and the medical board assessed the disability at 21.5%. The Tribunal, accepting the same, arrived the notional monthly income of deceased at Rs.5000/-, and awarded a sum of Rs.1,93,500/- towards loss of income. In respect of other heads, the Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, a sum of Rs.5,000/- towards extra nourishment, a sum of Rs.5000/- towards attender charges, a sum of Rs.5000/- towards future medical expenses, and a sum of Rs.5000/- towards transport charges. In the said circumstances, the Tribunal has rightly awarded a sum of Rs.2,23,500/- as compensation and there is no reason to interfere with the same.



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11. So far as the quantum of compensation in MCOP.No. 426 of 2011 is concerned, the Tribunal has granted only a sum of Rs.20,000/- towards pain and sufferings, and there is no reason found for fault with that.

12. So far as quantum of compensation in MCOP.No.429 of 2011 is concerned, the claimant has sustained a fracture in both the legs and in the left shoulder. He was admitted in the Government Hospital, Chennai, and taken treatment for nearly 15 days, and he has also undergone a surgery. The discharge summary was also marked as Ex.P9. The claimant was referred to a Medical Board and the Medical Board has assessed the disability as 35% of permanent disability. Considering the same, the Tribunal has applied the multiplier method, and awarded a sum of Rs.3,78,000/- towards loss of future income. The claimant is a loadman, now both legs were fractured and also suffered a fracture in the right shoulder. The medical board, after considering the nature of injuries, assessed the disability as 35% of permanent disability. Considering the nature of employment, as the claimant, a loadman, cannot discharge the duties as before due to the injuries sustained by him. Considering the above circumstances, the Tribunal has applied the multiplier method and awarded a fair compensation of Rs.4,00,000/-. I find no irregularity in it.

13. In the said circumstances, this Court is of the considered opinion that the compensation awarded by the Tribunal in all the claim petitions are not excessive and this Court finds no merit in all the three appeals. Accordingly, these Civil Miscellaneous Appeal are dismissed. The awards passed by the Tribunal is upheld. The entire compensation as calculated by the Tribunal, shall be deposited by the appellant/Insurance Company after deducting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, it is for the claimants to move a petition before the Tribunal for withdrawing the said amount as ordered by the Tribunal. No costs. Consequently, the Civil Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar



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To

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The Motor Accidents Claims Tribunal,
III Additional District and Sessions Court,
Cuddalore.

Copy to

The Section Officer,
VR Section,
High Court, Madras - 104.

C.M.A.Nos.1558, 1915 &
1916 of 2020
and
C.M.P. Nos. 11523, 14160 &
14162 of 2020

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NSK 02/08/2021