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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.33 of 2014
and M.P. No.1 of 2014

The Oriental Insurance Co. Ltd.,
Micro Office, 81-C, 1st Floor, KRC Complex,
Chennai Salai, Krishnagiri 635 001.

... Appellant/2nd Respondent

Vs.

1.Arasukumar @ Arasu

... 1st Respondent/Claimant

2.C. Saravanan

.. 2nd Respondent/1st Respondent

(R2 remained exparte before the Tribunal.

Hence, notice is dispensed with.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2013, made in M.C.O.P. No.787 of 2013, on the file of the Court of Special Sub Judge, (Motor Accident Claims Tribunal), Krishnagiri.

For Appellant : Mr. K. Vinod
for M/s. Elveera Ravindran

For Respondents : Mr. M. Selvam (For R1)

J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the judgment and decree dated 27.06.2013, made in M.C.O.P. No.787 of 2013, on the file of the Court of Special Sub Judge, (Motor Accident Claims Tribunal), Krishnagiri.

2.The appellant-Insurance Company is 2nd respondent in M.C.O.P. No.787 of 2013, on the file of the Court of Special Sub



Judge, (Motor Accident Claims Tribunal), Krishnagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.08.2010.

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3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tractor-Trailer belonging to the 2nd respondent and directed the 2nd respondent and appellant as owner and insurer of the said vehicle, to jointly and severally pay a sum of Rs.8,16,319/- as compensation to the 1st respondent.

4.Against the said award dated 27.06.2013, made in M.C.O.P. No.787 of 2013, the appellant-Insurance Company has come out with the present appeal.

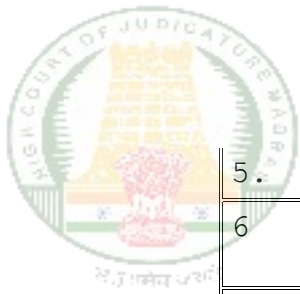
5.Though the appellant-Insurance Company has raised grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the appellant-Insurance Company restricted his arguments with regard to quantum of compensation awarded by the Tribunal. The learned counsel appearing for the appellant contended that the Tribunal having rejected the disability assessed by P.W.2 - Doctor as 60%, erred in fixing the loss of earning capacity of the 1st respondent as 50%. The Tribunal failed to see that assessment of disability is only for a particular part of the body and not for the whole body. The 1st respondent failed to prove that he suffered functional disability. The Tribunal erred in awarding compensation by applying multiplier method. The Tribunal without any evidence, has fixed the age and income of the 1st respondent and awarded excessive amounts as compensation. The Tribunal erred in awarding Rs.30,000/- towards partial loss of income during the period of treatment. The compensation awarded by the Tribunal under different heads are excessive and prayed for reducing the compensation granted by the Tribunal.

6.Per contra, the learned counsel appearing for the 1st respondent contended that in the accident, the 1st respondent suffered grievous and multiple injuries and has taken treatment as in-patient in different Hospitals and underwent bone grafting and surgery. P.W.2 - Doctor, after examining the 1st respondent and his medical records, has properly assessed that he suffered 60% disability. The Tribunal erroneously reduced the same to 50% and granted compensation only for 50% disability. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.



8. From the materials on record, it is seen that it is the contention of the 1st respondent that in the accident, he sustained grievous injuries and as P.W.1, he deposed with regard to the nature of injuries, treatment taken and disability suffered. The 1st respondent also examined P.W.2 - Doctor. P.W.2-Doctor examined the 1st respondent and certified that the 1st respondent suffered 60% disability. The Tribunal considering the evidence of P.W.2 - Doctor, nature of injuries, reduced the percentage of disability to 50% and considering the nature of work, applied multiplier method for awarding compensation for loss of earning capacity by fixing 50% disability. The reason given by the Tribunal for adopting multiplier method is correct, but while calculating the compensation for loss of earning capacity, the Tribunal mistakenly calculated for 55% disability. The Tribunal failed to see that P.W.2 - Doctor assessed the disability of the 1st respondent as 60% only for a particular part of the body. In view of the same, the percentage of disability fixed by the Tribunal for loss of earning capacity is excessive. Hence, this Court fixes the percentage of disability assessed by P.W.2 - Doctor as 35% for loss of earning power and the 1st respondent is entitled to compensation only for 35% disability. Considering Ex.P2 - wound certificate, the Tribunal fixed the age of the 1st respondent as 25 years and applied the multiplier '18', which is valid. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.3,78,000/- [Rs.5,000/- x 12 x 18 x 35%]. Considering the nature of injuries, treatment taken and disability suffered, the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. 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)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	5,94,000/-	3,78,000/-	Reduced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Nutrition	10,000/-	10,000/-	Confirmed
4.	Medical bills	1,09,119/-	1,09,119/-	Confirmed



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5.	Travel bills	8,200/-	8,200/-	Confirmed
6.	Partial loss of income	30,000/-	30,000/-	Confirmed
7.	Future medical expenses	30,000/-	30,000/-	Confirmed
8.	Attendant charges	10,000/-	10,000/-	Confirmed
	Total	8,16,319/-	6,00,319/-	Reduced by Rs.2,16,00 0/-

9. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.8,16,319/- is modified to Rs.6,00,319/- together with interest at the rate of 6% per annum from the date of petition till the date of deposit. The appellant-Insurance Company as well as the 2nd respondent are jointly and severally directed to deposit the modified award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.787 of 2013. On such deposit, the 1st respondent is permitted to withdraw the modified award amount along with proportionate interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company and the 2nd respondent are permitted to withdraw excess amount, lying in the credit of M.C.O.P. No.787 of 2013, if the entire award amount has already been deposited by them. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company and the 2nd respondent are not entitled to recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa



To

1. The Special Sub Judge,
(Motor Accident Claims Tribunal),
Krishnagiri.

2. The Section Officer,
V.R Section,
High Court, Madras.

+1CC to Mr.M.Selvam, Advocate, Sr.No.37428

+1CC to Mrs.Elveera Ravindran, Advocate, Sr.No.37337

C.M.A. No.33 of 2014
and M.P. No.1 of 2014

VBA (CO)
GMY (26/08/2021)