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C.M.A.(MD) No.490 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) No.490 of 2009

and

M.P. (MD) No.2 of 2009

The Branch Manager
The United India Insurance Co. Ltd.
Branch Office
P.L.A.Building
No.12-A, Kovai Road
Karur

... Appellant/Respondent No.2

-vs-

1.Natrayan

... 1st Respondent/Petitioner

2.Sakthivel

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in M.C.O.P.No.724 of 2002, dated 10.12.2004, on the file of the Motor Accident Claims Tribunal-cum-Chief Judicial Magistrate, Karur.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.N.Shanmugaselvam for R1
R2 - Dismissed

J U D G M E N T

This civil miscellaneous appeal is preferred by the Insurance Company challenging the Judgment and Award, dated 10.12.2004, passed in M.C.O.P.No.724 of 2002, by the Motor Accidents Claims Tribunal / Chief Judicial Magistrate Court, Karur.

2. The first respondent filed a claim petition seeking compensation of Rs.2,50,000/- alleging that on 05.03.2002, when he was riding TVS 50 two wheeler bearing registration No.TN47 A7128 from west to east direction, Yamaha Motorbike bearing registration No.TN47 F5922 belonging to the second respondent and insured with the appellant - Insurance Company came in a rash and negligent manner and hit against TVS 50. In the process, the first respondent sustained grievous injuries and he was immediately admitted in Amaravathi Hospital, Karur, where he took treatment for one month.



3. The claim was contested by the appellant - Insurance Company by filing counter denying their liability to pay the compensation. It is specifically stated that the claim is exorbitant and excessive.

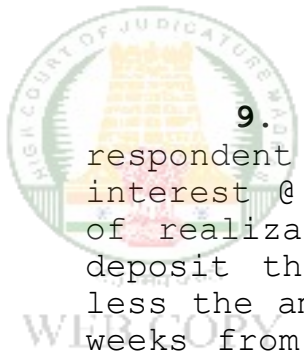
4. The claim petition was taken up for trial along with another claim petition arising out of the same accident. On the side of the claimant, P.Ws.1 to 4 were examined and Exs.P1 to P14 were marked and on the side of the Insurance Company, no witness was examined and no document was marked. The Tribunal, after considering the evidence adduced by the parties, held that the rider of the Yamaha Motorbike bearing Registration No.TN47 F5922 was responsible for the accident and awarded compensation of Rs.90,000/- with interest at the rate of 9% per annum. Challenging the said Award, the present appeal is filed.

5. Mr.C.Jawahar Ravindran, learned counsel appearing for the appellant - Insurance Company, would contend that the award is on the higher side and it requires reduction to some extent.

6. Per contra, Mr.N.Shanmugaselvam, learned counsel appearing for the first respondent / claimant, supported the conclusion arrived at by the Tribunal and prayed for dismissal of the appeal.

7. Heard both sides and perused the materials available on record.

8. In the matter on hand, the claimant, who deposed as P.W.3, has stated that he sustained fracture on his left thigh and injury on left cheek and took treatment as inpatient for thirteen days in Karur Amaravathi Hospital, wherein he underwent an operation and plate was fixed on his left leg and he was earning Rs.4,500/- per month as Mason and due to the injuries sustained by him in the accident, he could not do the mason works. The Doctor (P.W.2), who gave treatment to the claimant, has deposed that the claimant sustained 30% disability. Therefore, based on the evidence of P.W.2 and Disability Certificate (Ex.P13) and X-Ray (Ex.P14), the Tribunal awarded Rs.30,000/- for permanent disability. In addition, the Tribunal awarded Rs.2,000/- for loss of income during treatment period; Rs.1,000/- for transportation expenses; Rs.3,000/- for extra-nourishment; Rs.24,000/- for medical expenses; Rs.10,000/- for pain and suffering; Rs.10,000/- for loss of amenities and Rs.10,000/- for future medical expenses. In total, the Tribunal awarded Rs.90,000/- along with interest at the rate of 9% per annum. Since the Tribunal has passed the Award based on the evidence, this Court is of the opinion that the Award is fair and reasonable, which does not require interference of this Court. However, taking into consideration the facts of the case, the interest awarded by the Tribunal is reduced from 9% to 7.5% per annum.



9. In the result, this appeal is partly allowed. The first respondent / claimant is entitled to Rs.90,000 /- together with interest @ 7.5% p.a. from the date of claim petition till the date of realization. The appellant - Insurance Company is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the first respondent / claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To:

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Karur.
- 2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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VB (20.01.2021) 3P 4C