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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE D.KRISHNAKUMAR

CMA No.1882 of 2009

and

M.P No.1 of 2009

The Oriental Insurance Company Ltd.,
No.7, Uthamar Gandhi Salai
2nd Floor, Tosy Towers, Chennai-34
by its Divisional Office at Salem
Divisional Office
Chamundi Complex, 4 Roads
Salem-7.

... Appellant

..vs..

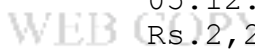
1.Abdul Rahim (Died)
2.K.Chinnappa Reddy
3.Shamshath
4.Minor Abdul Rahim
5.Minor Naseema
6.Minor Sharmila
(R4 to R6 represented by their
mother and next friend and Guardian/
3rd respondent)
7.Ramthabi
(R3 to R7 were impleaded as legal
heirs of 1st respondent vide
order of this Court dated 19.09.2019
in CMA No.1882 of 2009 and as per
memo dated 18.09.2019 in USR
No.27462 of 2019.)

... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.12.2008 made in M.C.O.P.No.367 of 2006, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem.

For Appellant : Mr.R.Sivakumar

For Respondent : R1-died
No Appearance for R3 to R6
R7-Batta with petition due
R2-Refused



Dissatisfied with the judgment and decree, dated 05.12.2008, passed by the tribunal awarding compensation of Rs.2,28,693/- along with interest at the rate of 7.5% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

3. The Tribunal after analyzing both oral and documentary evidences, has fixed the negligence on the driver of the first respondent and directed the second respondent/insurance company to pay a sum of Rs.2,28,693/- as compensation along with interest at the rate of 7.5% p.a from the date of petition till realization, on behalf of the first respondent and thereafter, directed them to recover the same from the first respondent. The compensation awarded by The tribunal under various heads are as follows;

Heads	Amount in Rs.
Disability (40 x 1000)	1,72,800
Pain and Suffering	10,000
Transport charges	5,000
Nutritious Food	5,000
Attender Charges	5,000
Medical Expenses	30,893
Total	2,28,693

<https://hcservices.accounts.gov.in/hcservices>



negligence on the part of the first respondent who hit the back side of the lorry. Further, the Tribunal has wrongly fixed the liability on the insurance company and since the owner of the lorry has violated the terms and conditions of the policy Ex.R1, the appellant is not liable to pay compensation to the first respondent. The compensation awarded for permanent disability is very excessive and the sum awarded under other heads are also unsustainable and requires interference by this Court.

5. Heard the learned counsel appearing for the appellant/ insurance company and perused the materials available on record.

6. Since the 1st respondent/claimant in this appeal having been reported dead, the legal heirs of the 1st respondent/claimant were impleaded as R3 to R7 in this appeal. Eventhough notice has been served to R3 to R6, none appeared for them.

7. Before the Tribunal, on the side of the claimant, four witnesses were examined as P.W.1 to P.W.4 and Exhibits P1 to P17 were marked. On the side of the second respondent, two witnesses were examined as RW1 and Ex.R1 & R2 were marked.

8. According to the claimant, based on the medical reports and the evidence of doctors, who were examined as PW2 and PW3, the Tribunal has fixed 20% disability to the claimant for the injuries sustained on his neck and also fixed 25% disability to the claimant for the fracture on his right leg. By considering the avocation of the claimant, the Tribunal has assessed 45% disability by adopting multiplier method and awarded an amount of Rs.1,72,800/- towards disability and by awarding the amount under other heads, the Tribunal has totally awarded a sum of Rs.2,28,693/- as compensation. Challenging the award passed by the Tribunal the instant appeal has been filed by the appellant/insurance company on the ground that the multiplier method adopted by the Tribunal cannot be sustainable.

9. According to the appellant/insurance company, the Tribunal has assessed 45% disability and adopted 16 years multiplier method which is contrary to the principles laid down by the Hon'ble Supreme Court. On considering the grounds in the appeal, the first respondent/claimant was a driver in the tempo and while he was driving the vehicle, a lorry was proceeding on the same direction and suddenly, the driver has applied brake and due to the said negligence on the part of the offending insured vehicle, the claimant who was driving the tempo vehicle hit on the backside of the lorry and thereby, he sustained 45% disability. PW3- doctor, Sridhar who was examined on the side of the claimant deposed that the claimant has got fracture in his right leg and has undergone



surgery for the said fracture and he suffered 28% of permanent disability for the injuries sustained in his right leg. The claimant has admitted that he is the driver of the tempo vehicle and he suffered 25% disability on his right leg and due to which, he could not able to drive the vehicle as normally before the accident. Under the said facts and circumstances of the case, the Tribunal has adopted the multiplier method for fixing the compensation. Even in the claim petition, he has claimed 100% disability by taking the fact that he was the driver of the tempo traveller and his future avocation has become deprived due to the said injuries sustained on his leg. Therefore, the Tribunal has rightly adopted the multiplier method for the compensation amount and there is no ground in this appeal to modify or interfere with the award passed by the Tribunal and the same is confirmed. In view of the same, the appeal is liable to be dismissed as devoid of merits.

10. In the result, this Civil Miscellaneous Appeal preferred by the appellant/insurance company is dismissed. The respondents 3 to 7, as the legal heirs of the deceased claimant are equally entitled to a sum of Rs.38,117/- each, out of the total award amount fixed by the Tribunal. The appellant/insurance is directed to deposit the entire award amount of Rs.2,28,693/- (rounded off to Rs.2,28,700/-) along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made by the appellant insurance company, the respondents 3 to 7 in this appeal, as legal representative of the deceased first respondent/claimant, are permitted to withdraw the same by filing necessary applications before the Tribunal. The share of the minor respondents 4 to 6 are directed to be deposited in any one of the Nationalised Bank, till they attains majority. The 3rd respondent, mother of the minor respondents 4 to 6, is permitted to withdraw the accrued interest, once in three months for the welfare of the minor children. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Salem.



2. The Section Officer,
VR Section,
High Court, Madras.

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+1cc to Mr.Sivakumar, Advocate SR.No.20473

CMA.No.1882 of 2009
& M.P No.1 of 2009

SS (CO)
GMY (22/09/2021)