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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021

PRONOUNCED ON : 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1217 of 2016
and
C.M.P.No.9211 of 2016

The Oriental Insurance Company Limited,
Door No.159, Kumaran Road, First Floor,
A.A.Complex, Tiruppur. ...Appellant/ 3rd Respondent

Vs.

1.S.S.Mayilraj ..1st Respondent/ Petitioner
2.Divyabharathi
3.P.Balasubramaniam ..2&3rd Respondents/ 1st & 2nd Respondents

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 05.11.2015, made in MCOP.NO.940 of 2012, on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tiruppur.

For Appellant : Mr.Elveera Ravindran
for Mr.K.Vinod

For R1 : Mr.Ma.P.Thangavel

For R2 : No appearance

For R3 : Died

JUDGMENT

(The case has been heard through video conference)

The Insurance Company is the appellant herein.

2.The first respondent herein viz., S.S.MahilRaj S/o.Selvam met with an accident and for claiming compensation, he has filed a petition in MCOP.No.940 of 2012 before Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur and the Tribunal has awarded a sum of Rs.5,50,900/- as compensation. Hence, the appellant herein/Insurance Company has filed this appeal to challenge the award passed in MCOP.No.940 of 2012, on the ground



of quantum.

3. Before the Tribunal on behalf of the petitioner PW1, PW2 & PW3 were examined and marked Exs.P1 to P7 and on behalf of the respondents RW1 & RW2 were examined and marked Exs.R1 to R8.

4. Heard both the learned counsels on the point of quantum and perused the materials placed on record.

5(a). On a perusal of the records, it is seen that the injured said to have been working as a cashier in Muthoot Finance Corporation. In this regard the authorized agent from the above said Corporation was examined as PW2 viz., Raghavi before the Tribunal. With regard to the injuries and the disability sustained by the claim petitioner, Dr.Dhanashekar was examined as PW3 and marked Ex.P6/disability certificate and Ex.P7/X-ray.

5(b). As per the evidence of PW3/doctor, coupled with documentary evidence viz., Exs.P2/discharge summary & P6/disability certificate, it is seen that the injured has sustained Head Injury, LT.Temporal and Frontal Hemorrhagic Contusion, LT.Fronto - Temporo - Parietal Acute Subdural Hematoma, Fracture RT.Temporal & RT.Parietal Bone. Accordingly, PW3/Doctor had issued Ex.P6/permanent disability certificate by fixing the disability as partial and permanent at 40% by following the norms prescribed under Central Government for the purpose of Workman Compensation Rules.

5(c). The evidence of PW3/doctor and also the injuries sustained by the claimant in the accident are clearly narrated before the Tribunal and the Tribunal has fixed the disability at 40%. Taking note of the fact that the accident has taken place in the year 2012, a sum of Rs.3,000/- per percentage disability was granted and accordingly, Rs.1,20,000/-(40% x 3,000) was granted by the Tribunal under the head of disability and the same is hereby confirmed.

6. Based upon Ex.P5/medical bill, a sum of Rs.92,000/- has been granted by the Tribunal under the head of medical expenses is reasonable. Based upon the evidence of PW2/authorized agent of Muthoot Finance Corporation, loss of income during the treatment period is arrived at Rs.8,000/- per month and for the period of five months loss of income calculated by the Tribunal is 8,000/- x 5 = Rs.40,000/- and the same is reasonable and confirmed by this Court. The compensation awarded under all other heads are found to be reasonable except reinvestment of Rs.80,000/- for hearing aid.

7. No doubt, it is true that Ex.P4/hearing aid prices for right ear, was marked namely a receipt issued by the Company.



However, whether there was any loss of hearing with the claim petitioner and such hearing loss is due to injuries sustained in the accident was not demonstrated before the Tribunal, assumes significance.

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8. On a perusal of the evidence of PW3/doctor in the absence of any intimation in Ex.P2/discharge summary, Ex.P3/wound certificate, Ex.P6/disability certificate, regarding any loss of hearing or partial loss of hearing, this Court finds that the award of Rs.80,000/- for hearing aid and Rs.60,000/- for loss of matrimonial prospects is legally un-sustainable and hence, for want of medical document in support of such a claim Rs.60,000/- + Rs.80,000/- = Rs.1,40,000/- is disallowed.

9. Accordingly, the award passed by the Tribunal is reduced from Rs.5,50,900/- to $(5,50,900 - 1,40,000) = \text{Rs.}4,10,900/-$ (Rupees Four Lakhs Ten Thousand and Nine Hundred Only).

10. In the result:

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above.

(b) The appellant herein/Insurance Company is directed to deposit the award amount as modified by this court to the credit of MCOP.No.940 of 2012, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur, within a period of four weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(c) The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the petitioner/first respondent herein is permitted to withdraw the modified compensation amount as awarded by this Court less the amount already withdrawn, if any.

(e) No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Principal Sub Judge,
Tiruppur.

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

+1CC to M/s.Ma.P.Thangavel, Advocate, Sr.No.19066

+1CC to M/s.Elveera Ravindran, Advocate, Sr.No.18731

CMA.No.1217 of 2016

RR(CO)
SB(18/11/2021)