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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.03.2021

PRONOUNCED ON : 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.3108 OF 2013

AND

M.P.NO.1 OF 2013

The Branch Manager,
The Oriental Insurance Co.Ltd.,
Shoba T.S.M.Complex,
R.S.Road (Opp.Town Railway Station)
Palakkad, Kerala.
Palakkad.

.. Appellant/2nd Respondent

Vs.

1.Venkatachalam
S/o.Ramasamy

.. Respondent/Petitioner

2.K.P.Dharmaraj
S/o.Ponnusamy

.. Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 02.03.2013 made in M.C.O.P.No.215 of 2010 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.Ma.P.Thangavel

For R2 : No Appearance



JUDGMENT

(The case has been heard through video conference)

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This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 02.03.2013 made in M.C.O.P.No.215 of 2010 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tiruppur.

2.The appellant is the 2nd respondent in M.C.O.P.No.215 of 2010 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tiruppur. The first respondent filed the said claim petition, claiming a sum of Rs.9,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.01.2010.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the Mini bus belonging to the second respondent and directed the appellant-Insurance Company to pay a sum of Rs.7,54,337/- as compensation to the first respondent/claimant.

4.Challenging the award of the Tribunal dated 02.03.2013 made in M.C.O.P.No.215 of 2010, the appellant-Insurance Company has come out with the present appeal.

5.Mr.S.Arun Kumar, learned counsel appearing for the appellant/Insurance Company submitted that the Tribunal had not properly appreciated the evidence when the claim petition filed by the claimant/1st respondent claims injuries on the head and its after-effect has functional disability. then it should be supported with by the Doctor who is a Neurologist and and for the injuries suffered in jaws and teeth, a Dentist had to be examined but P.W.2/Doctor before the Tribunal was neither a Neurologist nor a Dentist. When that being the case, the Tribunal has erroneously accepted the disability certificate issued under Ex.P-6 by Doctor/Dhanasekar as P.W.3 and



calculating the partial permanent disability as Rs.60,000/-, particularly when the P.W.3/Doctor had not assessed the disability based on the avocation of the injured claimant/P.W.1, the 1st respondent in this appeal. The mechanical calculation using the multiplier system and fixing the notional income as Rs.6,000/- by the Tribunal is unfair and unacceptable and unreasonable. Therefore, the same is to be set aside. The learned counsel for the appellant/Insurance Company relied upon the reported ruling reported in "Raj Kumar versus Ajay Kumar" (2011 ACJ page 1) in support of his submissions.

6.The learned counsel for the 1st respondent/claimant has submitted his arguments. As per the learned counsel for the claimant, the injured claimant was aged 48 years, he was a mechanic on the date of accident. He was earning a sum of Rs.8,000/- per month. He had taken treatment at P.S.G. Hospital, Coimbatore. He had spent a huge amount for his treatment to regain his normal health. The learned Tribunal had failed to appreciate the facts of the case in proper perspective. The learned counsel for the 1st respondent/claimant relied on the following rulings:

1. "The Branch Manager, New India Assurance Co.Ltd., Vs. K.R.Ganapathy and Others" reported in 2013 (1) TN MAC 573.

2. "Palanikumar Vs. Manikandan and Others" reported in 2021 SCC OnLine Madras 826.

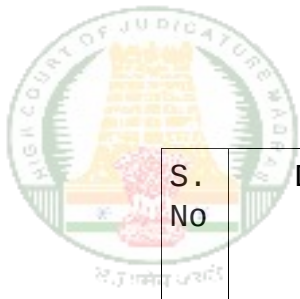
Point for Consideration:

Whether the award passed by the Tribunal is to be set aside?

7.Perused the records in M.C.O.P.No.215 of 2010 and the award passed by the Tribunal. On perusal of the records and the award passed by the Tribunal, it is found that, as per the claim petition in M.C.O.P.No.215 of 2010 under column - 11-nature of injuries' it was mentioned that the claimant sustained on his



right side face fracture, right wrist, right leg fracture, head and injuries all over the body. P.W.3 is the Doctor/Dhanasekar who had assessed the disability. On perusal of the deposition, it is found that he is neither a Dentist nor Neurologist dealing with the treatment of the injuries to the Brain. Therefore, the evidence of P.W.3/Dhanasekar and the disability certificate issued by him under Ex.P-6 and assessing the disability as 60% towards loss of earning capacity cannot be accepted. The claimant had claimed monthly income as Rs.8,000/-, the Tribunal had fixed it as Rs.6,000/- for the injuries suffered and during the period of treatment from 29.01.2010 at KGM Hospital, Chinniyampalayam, KMCH and P.S.G.Hospital, Kovai for two months and during the period of treatment of this two months and after discharge from hospital also, the claimant needs rest for that period, the loss of income is to be calculated as Rs.6,000/- X 4 = Rs.24,000/-. For the 60% disability, the Tribunal has discretionary power to vary the disability based on the fact that opinion of the Doctors varies from Doctor to Doctor individually. Therefore, for 60% disability as treated as 50% disability by this Court. For 55% disability for each percentage for Rs.2000/- is fixed = Rs.1,10,000/-, as there is no evidence regarding functional disability that the injury had affected his livelihood, the avocation of the claimant as a mechanic. If the injuries suffered on the head had been proved, he would not have let in evidence and spoken cogently. Therefore, there is nothing available before the Tribunal to arrive at a conclusion that the injured was disabled affecting his livelihood. Regarding other non-pecuniary head, the award passed by the Tribunal is maintained as such. 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 or reduced
1.	Disability	5,61,600/-	1,10,000/-	Reduced
2.	Pain and sufferings	25,000/-	25,000/-	Confirmed
3.	Loss of estate	20,000/-	20,000/-	Confirmed
4.	Extra nourishment & Transportation	4,000/-	4,000/-	Confirmed
5.	Medical expenses as per Ex.P-5	1,43,737/-	1,43,737/-	Confirmed
6.	Loss of income	-	24,000/-	Granted
	Total	Rs.7,54,337/-	Rs.3,26,737/-	Reduced by Rs.4,27,600/-

8.Point for consideration is answered against the 1st respondent/claimant and in favour of the appellant/Insurance Company and in the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,54,337/- is hereby reduced to Rs.3,26,737/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.215 of 2010, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar(Spl Cell CJ Conf)

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Sub Assistant Registrar

gbi



To

1. The I Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tiruppur.

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

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.24266

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.24407

C.M.A.No.3108 of 2013

RLD(CO)
RLP(20/10/2021)