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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON:25.02.2021

JUDGMENT DELIVERED ON :25.03.2021

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.NO.3134 OF 2013

The New India Insurance Co. Ltd.,
No.3, Main Road, First Floor,
Dindukal - 624 802.

... Appellant/2nd Respondent

Vs.

1. Saravanan
S/o. Chinnasamy

... 1st Respondent/Petitioner

2. Maheswaran
S/o. Thirumalaisamy
(R2 remained exparte in the lower court
hence notice may be dispensed with)

...2nd Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.881 of 2010 dated 18.04.2013 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Dharmapuri.

For Appellant : Mr.Ramesh Babu

For Respondents : Mr.D.Ramesh Kumar for R1.
R2-Exparte

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 18.04.2013 passed in MCOP.No.881 of 2010 by the Motor Accident Claims Tribunal/Additional District Judge, Dharmapuri.



2. The case in brief are as follows:

On 16.05.2010 at about 3.20 a.m., while the petitioner was travelling in the bus bearing Registration No.TN 36 F 9767, at that time, the Mahindra Van bearing Registration No.TN 59 M 4200 came from back side of the bus. The driver of the Mahindra Van driven in a rash and negligent manner, dashed against the deceased, as a result of which, he sustained grievous injury on his nose and lost his teeth.

3. Ms. A.S.Salomi, the learned counsel for the appellant/Insurance Company submitted her arguments. As per her submission, the injured victim of the accident is the claimant before the Tribunal. The injuries suffered are as follows: Loss of teeth and fracture of the nasal bone for which the Doctor had been examined as witness and he had assessed 15% disability towards loss of teeth and 20% disability towards fracture of nasal bone. The Tribunal had taken 35% disability and invoked multiplier system and thereby the award is excessive. The injuries caused on the claimant do not affect his avocation. Therefore, applying the multiplier system and fixing monthly income notionally as Rs.3,000/- and grant of award towards loss of income due to the permanent disability is found to be unreasonable and unacceptable. Aggrieved by the same, the Insurance Company has preferred this appeal.

4. Mr.D.Ramesh Kumar, the learned counsel for the first respondent/Claimant has submitted his arguments. As per his submissions, the loss of teeth and fracture on the nasal bone have affected the claimant's avocation. The avocation of the claimant is as a Mason. Therefore, he has to smell the materials used in the construction industry. Therefore, it cannot be accepted that he does not suffer functional disability. Further he submitted that the attendant charges were not allotted by the Tribunal. The award passed by the Tribunal is reasonable and acceptable. This appeal lacks merits and it has to be dismissed.

5. By way of rejoinder, the learned counsel for the appellant stated that the victim/claimant has not filed any cross-appeal or cross-objection.

6. Point for consideration.

Whether the award passed by the Tribunal is excessive.

7. Perused the claim petition filed by the claimant before the Motor Accident Claims Tribunal, Dharmapuri in MCOP No.881/2010, the counter filed by the Insurance Company and the order passed by the Motor Accident Claims Tribunal.



8. On perusal of the same, it is found that what had been argued by the learned counsel for the Insurance Company/appellant is found acceptable. For loss of teeth and fracture of the nasal bone cannot be treated as functional disability when compared to his avocation as Mason. Therefore, the calculation of the loss of income suffered by the victim/claimant mechanically by the Tribunal is found unacceptable and unreasonable. A Mason uses his hands and also he has to stand for a long time. Fractures of the bone of either on the arms or on the legs were not found. In such circumstances, he has not suffered functional disability. Therefore, invoking the multiplier system by the Tribunal is unwarranted and unacceptable. Therefore, the contention of the learned counsel for the Insurance Company that the award is excessive is found to be justified. If Rs.2,000/- is taken as compensation for each percentage, for 35%, it is Rs.70,000 (35x2000).

9. The learned counsel for the respondent/claimant submitted that no amount had been allotted under the head "attendant charges". The claimant was in hospital only for a week. The injury suffered by him had not resulted in partial permanent disability. Therefore, no possibility of requiring assistance from his close relatives. Therefore, the Tribunal not awarding attendant charges is found justified.

10. Since the amounts awarded by the Tribunal under all the other heads are just and fair, the same are hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of Income	1,59,120	70,000
2	Medical Expenses	40,677	40,677
3	Pain and Sufferings	10,000	10,000
4	For Transportation	5,000	5,000
5	For Nutrition	5,000	5,000
	Total	2,19,797	1,30,677

Accordingly, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.881 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District Judge) Dharmapuri, with accrued interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit along with



costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The claimant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dh

To

1. The Additional District Judge,
Motor Accidents Claims Tribunal
Dharmapuri.
2. The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.Ramesh Babu, Advocate, S.R.No.19655

C.M.A.No.3134 of 2013

BR(CO)
PM/08/10/2021