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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2104 of 2016

and

C.M.P.No.15251 of 2016

United India Insurance Co. Ltd.,
104-A, Peramanur Main Road,
Salem-7.

... Appellant

..Vs..

1.Raja

2.Eswaramoorthy

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and the Judgment dated 18.01.2016 made in MCOP.No.2294 of 2010 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge-No.II, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondent 1 : Mr.A.V.Arun
R2-set exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance company challenging the Award dated 18.01.2016 passed by the Motor Accident Claims Tribunal (Special Subordinate Judge-II for MCOP cases), Salem in MCOP.No.2294 of 2010.

2. The Tribunal under the impugned award has awarded a total compensation of Rs.18,75,839/- together with interest and costs to the first respondent/claimant as detailed hereunder:



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Heads	Award amount (Rs.)
Loss of future earnings	14,74,200/- (6500x12=78,000+50% =1,17,000x18=21,06,000 x70%)
Medical expenses	99,639/-
Artificial limb	1,50,000/-
Pain and suffering	60,000/-
Loss of amenities	60,000/-
Transport charges	10,000/-
Extra nourishment	10,000/-
Attender charges	10,000/-
Damage to clothes	2,000/-
Total	18,75,839/-

3. The Appellant Insurance company has challenged the impugned award questioning the quantum of compensation awarded to the first respondent by the Tribunal. According to the Appellant, the Tribunal erred in relying on unscientific assessment of PW2 (Doctor) to assume 70% disability of the first respondent/claimant, despite the fact that the first respondent has lost his left leg (below the knee above the ankle). According to them, the Tribunal ought to have treated the disability of the first respondent/claimant based on workmen compensation schedule and Government of India guidelines for permanent disability which according to them, will be only less than 50% disability. Therefore, it is their contention that the assessment of disability at 70% by the Tribunal is excessive. The Appellant has also challenged the award on the ground that erroneously, the Tribunal has granted loss of future prospects to the first respondent/claimant at 50% despite the fact that the first respondent/claimant was aged only 22 years at the time of the accident. According to them, the Tribunal ought to have awarded only 40% towards loss of future prospects to the first respondent/claimant.

4. Heard Mr.S.Arun kumar, learned counsel for the Appellant and Mr.A.V.Arun, learned counsel for the first respondent. Since the second respondent remained ex parte before the Tribunal, notice to the second respondent is dispensed with by this Court.

5. This Court has perused and examined the impugned award.

6. The nature of injuries sustained by the first respondent/claimant has not been disputed by the Appellant



Insurance company. Admittedly, the first respondent/claimant has suffered amputation of one of his legs due to the accident caused by the vehicle insured with the Appellant.

7. Before the Tribunal, the first respondent/claimant has filed 13 documents which were marked as Ex.P1 to Ex.P13 and four witnesses were examined on his side including his Doctor namely Dr.K.V.Srinivasan as PW2 who has deposed that the first respondent/claimant has suffered 70% disability as a result of the accident. The disability certificate was also marked as Ex.P10. On the side of the Appellant/Insurance Company neither any document was filed nor any witness examined.

8. The contention of the Appellant before this court is that the Tribunal ought to have taken note of the fact that as per the workmen compensation schedule and Government of India guidelines, the permanent disability for the nature of injuries sustained by the first respondent/claimant cannot be fixed more than 50%. However, no evidence to that effect has been produced by the Appellant Insurance Company before the Tribunal.

9. The Tribunal has passed the impugned award based on the materials available on record. The disability certificate Ex.P10 as well as the deposition of Dr.K.V.Srinivasan (PW2) reveals that the first respondent/claimant has suffered 70% disability as a result of the accident. If really the assessment of the Doctor is wrong, the Appellant ought to have adduced the evidence for reduction of the disability before the Tribunal which they have failed miserably as seen from the impugned award. Therefore, this Court is of the considered view that the Tribunal has rightly accepted the disability certificate Ex.P10 and deposition of Dr.K.V.Srinivasan (PW2) for assessing the disability of the first respondent/claimant at 70%.

10. Insofar as the loss of future prospects is concerned, this Court is of the considered view that considering the fact that the Tribunal has fixed only a sum of Rs.6,500/- as the monthly income of the first respondent/claimant for an accident that took place in the year 2010, whether the loss of future prospects is 50% or 40% will become immaterial as the overall compensation awarded by the Tribunal to the first respondent/claimant cannot be considered to be excessive as alleged by the Appellant.

11. For the foregoing reasons, there is no merit in this Appeal. Accordingly, this Civil Miscellaneous Appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the entire award amount along with interest and costs as assessed by the Tribunal after deducting the amount already deposited if any to the credit of MCOP.No.2294 of 2010 within a



period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.2294 of 2010 to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Special Subordinate Judge-No.II, Salem.

2.The Section Officer

V.R.Section, High Court of Madras.

+1cc to Mr.A.V.Arun, Advocate, S.R.No.22259

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.22226

C.M.A.No.2104 of 2016

SR-II(CO)

CB(06/09/2021)