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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2568 of 2016

and

CMP.No.18427 of 2016

The Manager,

Royal Sundaram Allianz Insurance Co. Ltd.,

Sundaram Towers, No.45 & 46, Whites Road,

Chennai - 600 014.

...Appellant/2nd Respondent

vs.

1.G.Parasuram

...1st Respondent/Petitioner

2.A.Gurunadha Reddy

...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree made in M A C T O P.No.436 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge) at Tiruttani dated 25.2.2016.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.N.S.Suganthan for R1
R2 - served - NA

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the impugned Award dated 25.02.2016 passed by the Motor Accident Claims Tribunal, Sub Court, Tiruttani in MCOP.No.436 of 2012.

2.Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant and Mr.Naveen Kumar, learned counsel for the first respondent.

3.The Appellant/Insurance Company has challenged the impugned Award on the following grounds:

(a) They are questioning the liability to pay compensation on the ground that the first respondent/claimant fell on his own



from his vehicle and there was no impact of the insured vehicle with the first respondent/claimant's vehicle.

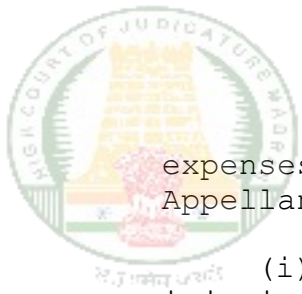
(b) The quantum of compensation awarded by the Tribunal is excessive.

4. The learned counsel for the Appellant drew the attention of this Court to Ex.R1-wound certificate and Ex.R2-discharge summary and would submit that as seen from the aforementioned documents, the first respondent/claimant has slipped and fell down from his two wheeler and sustained injuries in his right leg and therefore, there was no impact between the first respondent/claimant's two wheeler and the insured vehicle which was a car bearing Registration No.AP-03-AT-4100. The Tribunal has taken into consideration the defence of the Appellant Insurance Company and the Tribunal rejected the said contention on the ground that a thorough investigation was conducted by the Police and thereafter a chargesheet was also filed which confirms that the driver of the insured car was responsible for the cause of the accident. Hence, the Tribunal held that the Insurance Company liable to pay the compensation as seen from the evidence available on record.

5. Excepting for the reliance of Ex.R1 and Ex.R2 by the Appellant Insurance Company, no contra evidence has been produced by them before the Tribunal to prove that there was no impact between the insured car and the two wheeler.

6. Any adjudication of claims before the Motor Accident Claims Tribunal is based on preponderance of probabilities. In the case on hand, preponderance of probabilities in favour of the first respondent/claimant's contention that it was only the fault of the driver of the insured vehicle which resulted in him sustaining injuries out of the accident. Therefore, this Court confirms the findings of the Tribunal with regard to the Appellant's liability. Further, as seen from the evidence available on record, the Appellant Insurance Company has also not examined the driver of the insured vehicle and all these factors will infer that it was only the fault of the driver of the insured car which resulted in the first respondent/claimant's sustained injuries. Therefore, the first contention of the Appellant Insurance Company is rejected by this Court.

7. Insofar as the quantum of compensation awarded by the Tribunal is concerned, this Court is of the considered view that excepting for the compensation awarded by the Tribunal under the heads pain and suffering at Rs.50,000/- which is on the higher side, the quantum of compensation under various other heads viz., disability, transportation, extra nourishment and medical



expenses cannot be considered to be excessive as alleged by the Appellant Insurance Company for the following reasons:

(i) The first respondent/claimant has sustained the following injuries as a result of the accident:

(a) Tibia and Fibula both bones fractures on his right leg.

(b) Plates and screws have also been fixed on the first respondent/claimant for the injuries sustained by him.

(c) The Doctor in his disability certificate has disclosed that bones are malunited on the first respondent/claimant and he will have difficulty in bending his leg beyond 80° degrees.

8. The Doctor who examined the first respondent/claimant has assessed his disability at 60%. The Tribunal has awarded a disability compensation of Rs.1,80,000/- calculated at Rs.3,000/- per percentage of disability for the 60% disability suffered by the first respondent/claimant. The accident happened in the year 2012. This Court is of the considered view that the assessment of the disability made by the Doctor at 60% and the assessment of disability compensation at Rs.1,80,000/- is a correct assessment.

9. The Tribunal has awarded a compensation of Rs.20,000/- towards transportation, Rs.20,000/- towards extra nourishment and Rs.1,41,700/- towards medical expenses which is confirmed by this Court. However, the compensation awarded by the Tribunal towards pain and suffering at Rs.50,000/- is on the higher side and it has to be reduced by this Court. Accordingly, this Court reduces the same by Rs.30,000/- and fixes the compensation towards pain and suffering at Rs.20,000/- instead of Rs.50,000/- fixed by the Tribunal.

10. For the foregoing reasons, the compensation awarded by the Tribunal is reduced from Rs.4,11,700/- to Rs.3,81,700/- by this Court as detailed hereunder:

Heads	Amount awarded by the Tribunal	Modified/ Reduced by this Court
Disability	Rs.1,80,000	Rs.1,80,000
Transportation	Rs.20,000	Rs.20,000



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Heads	Amount awarded by the Tribunal	Modified/ Reduced by this Court
Extra nourishment	Rs.20,000	Rs.20,000
Pain and Suffering	Rs.50,000	Rs.20,000
Medical Bills	Rs.1,41,70 0	Rs.1,41,700
Total	Rs.4,11,70 0/-	Rs.3,81,700/-

11.The compensation awarded by the Tribunal is reduced to Rs.3,81,700/-from Rs.4,11,700/- along with interest and costs assessed by the Tribunal. The Tribunal shall transfer the amount assessed by this Court lying to the credit of MCOP.No.436 of 2012 to the bank account of the first respondent/claimant through RTGS, within a period of one week. Thereafter the Appellant Insurance Company is permitted to withdraw the excess amount if any, deposited by them before the Tribunal.

12.In the result, the appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

pam
To

1. The Motor Accidents Claims Tribunal
(Subordinate Judge) at Tiruttani.
2. The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.N.S.Suganthan, Advocate, S.R.No.33635

C.M.A.No.2568 of 2016

VBM[co]
NSK 23/11/2021