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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CIVIL MISCELLANEOUS APPEAL NO.971 OF 2013
M.P.NO.1 OF 2013

National Insurance Co. Ltd.,
Branch III,
Thanthai Periyar Market Complex,
II Floor, Opp. To old bus stand,
Salem.

... Appellant/2nd Respondent

..Vs..

1. Krishnan

...Respondent No.1/Petitioner

2. Saminathan

...Respondent-2/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 30.08.2011 made in M.C.O.P.No.373 of 2009 on the file of Subordinate Judge (Motor Accidents Claims Tribunal) Dharmapuri.

For Appellant : Ms.R.Sreevidhya
For Respondent No.1 : No Appearance
For Respondent No.2 : Not Ready

JUDGMENT

Brief facts of the claimants' case is as follows:

On 19.1.2004 at about 4.30 p.m., the petitioner was assigned duty to lay water pipes near Gangapuram, Chithode on Salem - Coimbatore road, with the help of Escot Crane bearing



registration No.PY-01-J 3947, when the water pipes were shifted with the help of Escot Crane, the vehicle was moved so rashly and negligently and thereby the petitioner fell down and the front wheel of the vehicle crushed right leg, hip, pelvic region, etc. Immediately, the petitioner was taken to Government hospital, Erode and later shifted to National hospital, Erode. The petitioner underwent many surgeries and hospitalised for long time. Due to the accident, the petitioner suffered permanent disability. The petitioner is unable to perform any kind of work and depends on others even for a day to-day affairs. The petitioner filed a claim petition claiming Rs.10,00,000/- as compensation from the respondents being the owner and insurer of the Crane.

2. On the side of the claimants, P.W.1 and 2 were examined and Ex.A-1 to A-11 were marked. On the side of the respondents, R.W.1 was examined and Ex.B1 to B4 were marked.

3. Tribunal, based on the oral and documentary evidence adduced by both sides, has come to the conclusion that due to rash and negligent driving of the Crane by its driver, the accident occurred and while awarding a sum of Rs.6,35,248/- as compensation to the claimants along with interest at the rate of 7.5% per annum from the date of claim petition till realization, has held that both the respondents 1 and 2 are jointly and severally liable to pay compensation to the claimant. The total compensation awarded by the tribunal under various heads are as follows:

Heads	Compensation awarded by the tribunal in Rs.
Permanent disability 2600 x 12 x 17	5,30,400/-
Pain and Suffering	25,000/-
Transport expenses	2,000/-
Extra Nourishment	10,000/-
Medical expenses	67,848/-
Total	6,35,248/-



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4. Challenging the said award, Insurance Company has filed the present appeal against the liability foisted and the quantum of compensation awarded by the tribunal.

5. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials available on record.

6. According to the learned counsel appearing for the appellant, the claimant who was seated along with the driver fell down and sustained injuries while shifting the water pipes. The risk of a coolie is not covered under the policy. Further, only one seat is provided in the Crane and the driver alone can sit and no premium was paid to cover the risk of a coolie and the risk of a Coolie is not contemplated under law and as such the insurer is not liable to pay any compensation to the claimant. The petitioner has not travelled in the aforesaid Crane as passenger, whereas he fell down from the Crane and sustained injuries while he was doing his work as loadman. Ex.B-3 relied upon by the appellant clearly shows that the Insurance company will indemnify the insured in the event of an accident caused or arising out while use of vehicle including loading or unloading of the vehicle and the premium of Rs.785/- has been paid. The tribunal has elaborately discussed the cause of accident and came to the conclusion that due to the negligence on the part of the driver of the Crane, the petitioner fell down and sustained injuries. Further, no material has been placed by the appellant/Insurance Company to disprove the case of the petitioner. Therefore, as rightly pointed out by the tribunal, the Insurance Company cannot escape from its liability to pay compensation to the petitioner.

7. Insofar as the quantum of compensation is concerned, Doctor who gave Ex.A.10 disability certificate was examined as P.W.2, deposed that due to the accident, the petitioner sustained fracture in shaft of femur in right thigh and plating was done and fracture in pelvic bone in hip and caused displacement and not joined and sustained vascular injury in right leg and surgery was done and hence, he is not able to do even his day-to-day work on his own and thus, assessed permanent disability at 65%. X-Ray in this regard was marked as Ex.A.11. Based on the aforesaid evidence, the tribunal has accepted the



65% permanent disability assessed by the Doctor. The petitioner was a coolie at the time of accident, the tribunal has fixed Rs.4000/- as monthly income of the petitioner and arrived loss of income of the petitioner as under:

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Considering the age of the petitioner i.e. 34 years, as per II Schedule of the Motor Vehicle Act, the tribunal has rightly adopted 17 multiplier and calculated the loss of income of the petitioner as $2600 \times 12 \times 17 = \text{Rs.}5,30,400/-$. Insofar as other heads also, the tribunal has awarded just and reasonable compensation to the petitioner. Therefore, there is no warrant to interfere with the award passed by the tribunal and as such, the award passed by the tribunal is confirmed.

8. Consequently, the appeal stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1. The Subordinate Judge,
(Motor Accidents Claims Tribunal),
Dharmapuri.
2. The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Ms.R.Sreevidhya, Advocate, S.R.No.15522

Civil Miscellaneous Appeal No.971 of 2013

M.P.No.1 of 2013

RSI(CO)

RLP(30/09/2021)