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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

CORAM:

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.M.A.No.1981 of 2021

and

C.M.P.No.10690 of 2021

The Oriental Insurance Co.Ltd.,
Ponnusamy Gounder Complex,
Tiruchengode Road,
Sangagiri, Salem District.

.. Appellant/2nd Respondent

Versus

1.Mani @ Manikandan

2.Dhinakaran

.. Respondents/Petitioner/1st Respondent

This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.09.2020 made in M.C.O.P.No.108 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri.

For Appellant : Mr. J. Chandran
For R1 : Mr.T.S.Arthanareeswaran

JUDGMENT

The matter is heard through "Video Conferencing/Hybrid mode".

2.This Civil Miscellaneous Appeal has been to set aside the award dated 30.09.2020 made in M.C.O.P.No.108 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri.

3.The appellant is the second respondent in M.C.O.P.No.108 of 2016 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Sankagiri. The 1st respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 29.05.2015.

4.The brief case of the claimant/first respondent is as follows:

On 29.05.2015, at about 1.30 p.m., the claimant was riding his two wheeler bearing registration No.TN-24-H-1949 along Tiruchengode-Salem Road and while nearing Mahendra Engineering



College, a car bearing registration No.TN-09-U-8599 came in a high speed and hit the motorcycle thereby he sustained grievous injuries and was admitted to Government Hospital, Salem and then admitted to Krishna Hospital, Tiruchengode for better treatment. According to the claimant, the rash and negligent driving of the driver of the car was the cause of accident and since the first respondent insured his car with the second respondent, both of them are liable to pay compensation to the claimant.

5.The 2nd respondent remained ex-parte before the Tribunal.

6.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and contended that the accident occurred solely due to rash and negligent riding of the two wheeler by the 1st respondent and the alleged accident is also denied by the 2nd respondent. The first respondent has to prove the age, income, nature of injuries, medical expenses incurred due to the injuries sustained in the accident by producing documentary evidence. In any event, the total amount claimed as compensation is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, on the side of the claimant/first respondent, the claimant was examined as PW1 and Ex.P1 to Ex.P5 were marked. On the side of the appellant/Insurance Company, one witness was examined as RW1 and Ex.R1 was marked. In addition to that, Ex.C1 and Ex.C2 were marked as Court documents.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider of the car owned by second respondent herein and directed the appellant, being the insurer of the said vehicle, to pay a sum of Rs.6,80,000/- as compensation to the claimant, at the first instance and recover the same from the second respondent herein, owner of the car.

9.To set aside the said award dated 30.09.2020 made in M.C.O.P.No.108 of 2016, the appellant has come out with the present appeal.

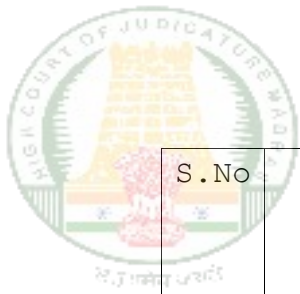
10.Questioning the quantum of compensation awarded by the Tribunal and liability to pay the same, the learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal has not considered the evidence available on record both oral and documentary in a proper perspective and awarded the excessive compensation that too in the case of injury which is liable to be reduced. The learned counsel pointed out that the Tribunal has erroneously accepted the permanent disability certificate issued by the Medical Board at 20% vide under Ex.P1, but wrongly applied multiplier method. It is further contended



that the Tribunal has awarded under the head of future medical expenses and also towards continuous disability, which in fact covered under the head of future loss of earning capacity and therefore the compensation under these heads cannot be sustained. The learned counsel also submitted that the driver of the offending vehicle was possessing only two wheeler licence and no LMV licence was possessing which is violation of Motor Vehicle Act and condition of policy, however, the Tribunal erroneously ordered pay and recovery which is liable to be set aside.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the entire materials available on record.

12. On a perusal of the entire award reveals that the first respondent had sustained injuries in a road accident as per Ex.P1/disability certificate, it is clear that the first respondent/injured sustained only 20% permanent disability and even for this, the Tribunal has applied multiplier method and arrived at a sum of Rs.3,24,000/- towards loss of income. However as rightly contended by the learned counsel for the appellant, the Tribunal has awarded compensation at Rs.50,000/- towards future medical expenses and also Rs.50,000/- towards continuous disability which in the opinion of this Court cannot be sustained since for sustaining 20% permanent disability, the Tribunal has appropriately awarded the compensation towards loss of income by applying multiplier method and when the medical evidence vide Ex.P1 it is clearly fixed the disability at 20%, there would be no further disability in future so as to compensate the same. Therefore, this Court is of the view that there would be no continuous disability and also no future medical expenses may occur. Therefore, the compensation awarded under the heads future medical expenses and continuous disability awarded by the Tribunal are hereby set aside. As regards the liability is concerned, considering the facts and circumstances, the Tribunal has rightly directed the appellant to pay and recover the same from the second respondent. This is well settled preposition of law which cannot be agitated. As regards the compensation awarded by the Tribunal under the heads, viz., Extra nourishment at Rs.50,000/-, Transportation at Rs.25,000/- and Rs.10,000/- for Damage to clothes are concerned, this Court is of the view that the Tribunal has granted the same in excessive while the appellant has sustained only 20% ability and therefore the same are liable to be reduced as Rs.25,000/-, Rs.10,000/- and Rs.5,000/- respectively under the heads of Extra nourishment, Transportation and Damage to clothes respectively. Therefore, in view of the above the compensation awarded by the Tribunal is modified as tabulated as under.



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	3,24,000/-	3,24,000/-	Confirmed
2.	Extra nourishment	50,000/-	25,000/-	Reduced
3.	Medical expenses	1,20,000/-	1,20,000/-	Confirmed
4.	Future medical expenses	50,000/-	-	Set aside
5.	Pain & sufferings	50,000/-	50,000/-	Confirmed
6.	Transportation	25,000/-	10,000/-	Reduced
7	Damage to cloth	10,000/-	5000	Reduced
8	Continuous disability	50,000/-	-	Set aside
	Total	Rs.6,79,000/- (Rounded off to Rs.6,80,000/-)	Rs.5,34,000/-	Reduced by Rs.1,46,000/-

13. In the result, the Civil Miscellaneous Appeal is filed by the appellant/Insurance Company is partly allowed and the compensation awarded by the Tribunal at Rs.6,80,000/- is hereby reduced to Rs.5,34,000/- 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, at the first instance and recover the same from the 2nd respondent/owner of the vehicle. 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.108 of 2016, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar



gbi

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Sankagiri.

+2cc to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.36890
+1cc to Mr.J.Chandran, Advocate, S.R.No.36351

C.M.A.No.1981 of 2021

NMI (CO)
GN(29/10/2021)