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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2938 of 2021 &
CMP.No.16813 of 2021

The Branch Manager,
ICICI Lombard General Insurance Company Ltd.,
ICICI Lombard House, 414,
Veer Savarkar Marg, Near Siddhi Vinayakar Temple,
Prabhadevi, Mumbai - 400025.
Local business office,
2nd floor, CVN, 2nd Exececvenei,
No.647/1, B3, Bye Pass Road,
Hosur - 635 109. ...Appellant/2nd Respondent

Vs

1.Umapathy
2.Smiruthi Chadrasekar ...Respondents/Petitioner/
Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 03.01.2020 made in MCOP.No.667 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub-Ordinate Judge (MACT), Krishnagiri.

For Appellant : Mr.K.Poomalai

JUDGMENT

This appeal has been filed by the Insurance Company challenging the award dated 03.01.2020 passed by the Motor Accident Claims Tribunal (Special Subordinate Judge, Krishnagiri) in MCOP.No.667 of 2018.

2. Heard Mr.K.Poomalai, learned counsel for the Appellant. Since no adverse orders are going to be passed against the respondents, notice to the respondents is dispensed with by this Court.

3. The Appellant Insurance company has challenged the impugned award only on the ground that the quantum of compensation awarded by the Tribunal to the first

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respondent/claimant is excessive. The details of the compensation awarded by the Tribunal are as follows:

Heads	Award Amount (Rs.)
Disability compensation	2,04,000/- (68 x 3000)
Medical expenses	2,35,333/-
Transportation	10,000/-
Extra nourishment and attender charges	15,000/-
Pain and suffering	54,400/-
Social amenities	54,400/-
Loss of income during the period of treatment	28,500/-
Damage to clothing and articles	1,000/-
Total	6,02,633/-

4. As a result of an accident which happened on 28.05.2017 caused by a vehicle insured with the Appellant Insurance Company, the first respondent/claimant sustained the following injuries namely (a) fracture neck of left femur; (b) left leg both bone type I open fracture; (c) left medial mallelus displaced fracture and (c) fat embolism syndrome.

5. The nature of injuries sustained by the first respondent/claimant has not been disputed by the Appellant Insurance Company before the Tribunal. The medical board assessed the disability of the first respondent/claimant at 68% which has been accepted by the Tribunal. No contra evidence has been produced by the Appellant Insurance Company to disprove the assessment of disability of the first respondent/claimant at 68%. The Tribunal has awarded Rs.2,04,000/- towards disability compensation calculated at Rs.3,000/- per percentage of disability for the 68% disability which cannot be considered to be excessive as the Tribunal has granted the same only after giving due consideration to the nature of injuries as well as to the year of the accident.

6. The Tribunal has awarded a compensation of Rs.2,35,333/- towards medical expenses which is supported by Ex.P8 series - medical bills marked before the Tribunal. This Court does not find any infirmity in the said assessment. the Tribunal has awarded a compensation of Rs.10,000/- towards medical expenses, Rs.15,000/- towards extra nourishment and attender charges,

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Rs.54,400/- towards pain and suffering, Rs.54,400/- towards social amenities, Rs.28,500/- towards loss of income and Rs.1,000/- towards damage to clothing and articles which cannot be considered to be excessive as alleged by the Appellant Insurance Company.

7. The first respondent/claimant was a graduate, aged 28 years and working as a site supervisor in a private concern at the time of the accident. In his claim petition, he has pleaded that he was earning Rs.20,000/- per month. However, the Tribunal has fixed the monthly income of the first respondent/claimant at Rs.9,500/- on notional basis, since the first respondent did not produce any documentary evidence in support of his claim that he was earning Rs.20,000/- per month. The assessment of notional monthly income of the first respondent/claimant at Rs.9,500/- by the Tribunal for the accident that happened in the year 2017 cannot be considered to be excessive as alleged by the Appellant. The Tribunal has awarded Rs.28,500/- towards loss of income calculated at Rs.9,500/- per month for a period of three months which cannot be considered to be excessive as alleged by the Appellant as the Tribunal after giving due consideration to the nature of injuries sustained by the first respondent/claimant has come to the conclusion that the first respondent/claimant would certainly have been unable to do his avocation at least for a period of three months.

8. The total compensation of Rs.6,02,633/- awarded by the Tribunal cannot be considered to be excessive as alleged by the Appellant Insurance Company.

9. For the foregoing reasons, there is no merit in this appeal. Accordingly, this appeal is dismissed. The Appellant Insurance Company is directed to deposit the amount awarded by the Tribunal together with interest from the date of claim till the date of deposit and costs, after deducting the amount already deposited if any, to the credit of MCOP.No.667 of 2018 within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.667 of 2018 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

https://hcservices.ecourts.gov.in/hcservices/

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To

1. The Special Sub-Ordinate Judge (MACT),
   Krishnagiri.

2. The Section Officer,
   V.R.Section,
   High Court of Madras.

+1cc to Mr.K.Poomalai, Advocate, S.R.No.53952(21/12/2021)

C.M.A.No.2938 of 2021

PP[co]
NSK 01/12/2021