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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1445 of 2020

and

C.M.P.No.10608 of 2020

(Through Video Conferencing)

The New India Assurance Company Ltd.,
Divisional Office
Sethukrishna Trade Centre
No.133/31-A, 2nd Floor,
Trichy Main Road,
Near Raja Sabari Theatre,
Gugai, Salem 636 006.

...Appellant/R2

vs.

1.Baskar

...Respondent 1/Petitioner

2.R.P.Paramasivam

...Respondent 2/Respondent 1

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 30.08.2019 made in M.C.O.P.No.331 of 2015 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.2)Salem.

For Appellant : Mrs.R.Sreevidhya

For Respondents : M/s.A.V.Arun

J U D G M E N T

The appellant Insurance Company is aggrieved by the impugned Judgment and decree dated 28.01.2015 passed the Motor Accident Claims Tribunal (Special Sub Court No.2) Salem in M.C.O.P.No.331 of 2015.



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2. By the impugned Judgment and decree, the Tribunal has awarded a sum of Rs.24,87,019/- as compensation for the injury suffered by the 1st respondent/claimant.

3. The learned counsel for the appellant Insurance company submits that the Tribunal erred in awarding a higher compensation for pain and sufferings, future medical expenses, attender charges, transport charges and extra nourishment. He is therefore prayed for modification of the award amount in the impugned Judgment and decree.

4. Defending the impugned Judgment and decree, the learned counsel for the 1st respondent/claimant submits that though the Tribunal has awarded a lower compensation. Since the 1st respondent/claimant has not filed any appeal for enhancement, the award amount may be confirmed. It is submitted that the claimant was entitled to higher compensation as the 1st respondent/claimant was working as a supervisor and earning a sum of Rs.20,000/- p.m. It is submitted that the Tribunal has fixed a notional income of only Rs.8,000/- p.m to arrive at the compensation. He therefore submits that the Tribunal ought to have awarded higher compensation.

5. I have considered the arguments advanced by the learned counsel for the appellant Insurance company and the 1st respondent and I have also perused the impugned Judgment and decree passed by the Tribunal. I have also perused the exhibits and prescriptions of the evidence on record before the Tribunal.

6. Ex.P.2 - Wound Certificate has brought to the nature of injury suffered by the claimant, which reads as follows:

- i) Diffuse axonal injuries
- ii) Brain stem contusion
- iii) Left leg both bone fracture malunion.

The wound certificate of Sri Ramachandra Medical College Hospital, Porur, Chennai has qualified the nature of injury suffered by the 1st respondent/claimant was grievous in nature.

7. From the materials available on record, it is seen that the Tribunal has held that the accident occurred due to rash and negligent driving of the Maruti Swift Dzire Car by its driver belonging to the 1st respondent. The 1st



respondent/claimant has taken treatment as an in-patient at Sree Ramachandra Medical College Hospital, Porur, Chennai, from 19.09.2014 to 12.11.2014. He was thereafter again admitted for treatment in SRM Medical College Hospital, Kancheepuram from 13.11.2014 to 23.01.2015 and thereafter again admitted for treatment in the same hospital from 14.05.2015 to 26.05.2015 i.e. for a period of 139 days and thereafter plastic surgery was done. The 1st respondent/claimant was also referred to Medical Board, Salem. The Medical Board had examined the 1st respondent/claimant and assessed the permanent disability of the 1st respondent/claimant as 30%. The record also indicates that the claim petition was filed by the 1st respondent/claimant's father Muthusamy and the 1st respondent/claimant referred to as a person of unsound mind .

8. In my view, the Tribunal has awarded lesser compensation towards permanent disability by considering the notional income of Rs.8,000/- p.m. Nevertheless, the Tribunal has awarded higher amount of compensation under the other heads which more or less make up for the lesser compensation due to the lower notional income of Rs.8,000/- p.m.

9. The first respondent/claimant was aged about 23 years at the time of accident. The nature of injury also stands corroborated by the secondary evidence from Ex.C.1 disability certificate issued by the Medical Board. The 1st respondent/claimant is a dependent of his family members. He was represented by his father, Muthusamy. He suffered permanent disability. Though, it is noticed that the Tribunal has not awarded towards any loss of marital prospects to the 1st respondent/claimant, no further amount is also required to be added as compensation awarded by the Tribunal under the other heads are slightly higher. Under these circumstances, I am inclined to uphold the compensation awarded by the Tribunal. There shall be however no interest on a sum of Rs.1,00,000/- awarded towards future medical expenses from the date of claim petition till the date of impugned Judgment and decree. But for the above, there shall be no other modification of the amount awarded by the Tribunal.

10. The appellant Insurance Company is therefore directed to deposit the award amount of Rs.23,87,019/- together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment. The appellant - Insurance Company shall also



deposit a sum of Rs.1,00,000/- towards future medical expenses, from the date of claim petition till the date of deposit. On such amount of Rs.1,00,000/- the appellant/Insurance Company is liable to pay interest from the date of award till the date of deposit at 6%.

11. On such deposit, 1st respondent/claimant is permitted to withdraw the aforesaid amount of compensation, less any amount already withdrawn, by filing suitable application before the Tribunal.

12. In the result, the appeal filed by the appellant - Insurance company stands partly allowed to that extent. No cost. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kkd
To:-

The Motor Accident Claims Tribunal,
(Special Sub Court No.2)Salem.

+1cc to Mrs.R.Sreevidhya, Advocate Sr.25181
+1cc to Mr.A.V.Arun, Advocate Sr.25177

C.M.A.No.1445 of 2020
and
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srg 11/04/2022