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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No. 1146 of 2014

and

M.P.No.1 of 2014

The Branch Manager,
M/s. United India Insurance Co. Ltd.,
No.28, Mylam Road,
Meenachi Complex,
Tindivanam

... Appellant /Respondent III

Versus

1. Mr.Kaliyaperumal
S/o. Ponnai

2. Thiru.A.Murugaiyan
S/o. Angalan

... Respondents/Petitioner &
Respondent I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and decree dated 09.01.2013 made in M.C.O.P.No.34 of 2011 on the file of the Motor Accident Claims Tribunal, Tindivanam, Villupuram.

For Appellant : Mr.J.Chandran

For Respondent : Mr.T.Dhanya Kumar for R1
R2- Not ready in Notice

J U D G M E N T

This appeal has been laid as against the judgment and decree dated 09.01.2013 made in M.C.O.P.No.34 of 2011 on the file of the Motor Accidents Claims Tribunal, Tindivanam, Villupuram, thereby awarded the compensation to the tune of Rs.1,84,799/-.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.



3. The case of the claimants is that on 22.11.2010 at about 8.30 hrs when the claimant was travelling as a load man with other load men in a Lorry owned by the first respondent and insured with the second respondent, the driver of the lorry drove it, in a rash and negligent manner at ECR Road, Marakkanam, Boomiswaran Koil Junction. Due to rash and negligent driving, the lorry capsized on left side of the road resulting in the claimant sustaining fractures on left leg and multiple injuries all over the body. Immediately he was taken to PIMS Hospital, Pondicherry and thereafter, he was taken to Government General Hospital, Pondicherry. He underwent surgeries due to the said injuries. He could not continue his avocation of being a load man and he was earning Rs.10,000/- per month.

4. Resisting the same, the second respondent filed counter stating that the accident did not take place due to the rash and negligent driving of the first respondent. The vehicle is a goods vehicle and it is prohibited from carrying passengers in a goods vehicle. The petitioner is not a load man and he is an unauthorized passenger. Since he is a gratuitous passenger, the insurance Company is not at all liable to pay compensation to them. Therefore, he sought for dismissal of the claim petition.

5. On the side of the claimants, they examined P.W.1 to P.W.7 and marked Ex.P.1 to Ex.P.29. On the side of the respondent neither oral nor documentary evidence was let in. On the basis of the evidence available on record and also considering the submission made by the learned counsel appearing on either side, the Tribunal awarded a sum of Rs.1,84,799/- as compensation payable by the first and second respondent jointly and severally.

6. Aggrieved by the same, the second respondent preferred this Civil Miscellaneous Appeal.

7. The learned counsel appearing for the appellant/Insurance Company would submit that the petitioner is a gratuitous passenger and he is not a load man. Therefore, the second respondent is not at all liable to pay any compensation as awarded by the Tribunal. The disability of the claimant was assessed at 37% and the same was taken by the Tribunal for consideration. The Tribunal also granted exorbitant award for loss of income for a period of 6 months, when the claimant failed to prove his income in the manner known to law. The loss of amenities was also excessively awarded as Rs.37,000/-.



8. Per contra, the learned counsel appearing for the respondent /claimant would contend that the claimant sustained fracture on his left leg and multiple injuries all over the body. Therefore, he could not continue his avocation as load man. The disability was assessed at 37%. He had taken treatment for 6 months and as such he lost his income for three months. He being a load man was earning a sum of Rs.10,000/- per month even though, the Tribunal awarded only Rs.54,000/- as loss of income. Therefore, the Tribunal rightly awarded compensation and prayed for dismissal of the present appeal.

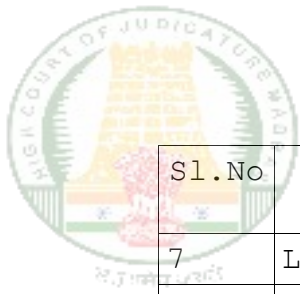
9. Heard Mr.J.Chandran, learned counsel appearing for the claimant and Mr.T.Dhanyakumar, learned counsel appearing for the first respondent.

10. The claimant being a load man travelled in a lorry belonging to the first respondent and insured with the second respondent. The driver of the lorry had driven the same in a rash and negligent manner and the lorry, capsized, due to which the petitioner sustained fractures on his left leg and also hand. The disability was assessed at 37% and it is partial permanent disability. The Tribunal rightly awarded Rs.1000/- per percentage. In respect of loss of income, the Tribunal had taken Rs.9000/- as his monthly income and awarded Rs.54,000/- as loss of income for a period of six months. However, the Tribunal awarded a sum of Rs.37,000/- towards loss of amenities. Therefore, this Court reduces it from Rs.37,000/- to Rs.25,000/- towards loss of amenities.

11. Insofar as the other heads, the Tribunal has awarded a sum of Rs.18,500/- towards Pain and Suffering. This Court is inclined to grant a sum of Rs.25,000/- towards Pain and Sufferings and confirms the amount awarded under other heads.

12. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Disability	37,000	37,000
2	Pain and Suffering	18,500	25,000
3	Extra Nourishment	10,000	10,000
4	Damages to Clothes	2,000	2,000
5	Transportation	10,000	10,000
6	Loss of Income	54,000	54,000



Sl.No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
7	Loss of amenities	37,000	25,000
8	Attendant Charges	15,000	15,000
9	Medical Bill	1,299	1,299
	Total	1,84,799	1,61,299

13. In the result the Civil Miscellaneous Appeal is allowed as follows:-

(i) The award passed by the Tribunal is modified from Rs.1,84,799 /- to Rs.1,61,299/- and the appellant is permitted to withdraw the excess deposit amount if any, with accrued interest.

(ii) The award amount will carry the interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The appellant is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit, the claimant/first respondent is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.

(v) The first respondent/claimant is not entitled to any interest for the delay (default) period, if any.

(vi) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

dh

To

The Motor Accident Claims Tribunal,
Tindivanam, Villupuram.

Copy to:

The Section Officer,
V.R.Section,
Madras High Court,
Chennai.



+1cc to Mr.J.Chandran, Advocate SR.No.25099

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.24813

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C.M.A.No.1146 of 2014

AJS (CO)

CB(06/12/2021)