



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.265 of 2013
and
MP(MD)No.1 of 2013

Branch Manager,
The Oriental Insurance Company Limited,
II Floor, Sathiyamoorthy Road,
Housing Unit,
Pudukkottai Town & District.

: Appellant/2nd Respondent

Vs.

1.Balasubramanian : 1st Respondent/Petitioner
2.Duraithivyanathan : 2nd Respondent/1st Respondent
(R2 remained ex-parte before
the lower court)

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 09.11.2012 made in MCOP No.14 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Pudukkottai.

For Appellant : Mr.K.Bhaskaran

For 1st Respondent : Mr.T.Veerakumar
for Mr.S.Deenadhayalan

For 2nd Respondent : No appearance

JUDGMENT

Challenge made in this appeal is to the award, dated 09.11.2012 made in MCOP No.14 of 2012 on the file of Motor Accident Claims Tribunal (Sub Court), Pudukkottai.

2.The brief facts of the case are that on 11.03.2010 at 10.45 am, when the claimant was riding his motor cycle TN-49-K-2794 near Panjamuni Kovil towards Kudumiyan Malai, the Tipper Lorry TN-55-K-1164 came in a rash and negligent manner and dashed against the two wheeler. In that process, the claimant had sustained injuries all over the body and he was immediately admitted in the Pudukkottai Head Quarters Government Hospital for giving first aid and thereafter, he was referred to GMC Hospital, Trichy, where he underwent surgery. A claim petition was filed by the claimant seeking compensation of Rs.25,00,000/- on the ground that the offending vehicle caused the



accident.

3.The claim was opposed by the appellant Insurance Company disputing the manner of accident and their liability to pay compensation.

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4.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Tipper Lorry was responsible for the accident and awarded compensation of Rs.23,99,580/- with interest @ 7.5 % p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

5.Heard the learned counsel appearing on either side and perused the materials available on record.

6.Even though various grounds were raised in the grounds of appeal, it is mainly contended by the learned counsel for the appellant Insurance Company that Rs,1,00,000/- awarded by the tribunal under the head of future medical expenses is without any documentary evidence and the compensation awarded under other heads are excessive, so the quantum is to be reduced. On the other hand, the learned counsel appearing for the 1st respondent/claimant contended that the award of the tribunal is reasonable one and hence, there is no need to interfere with the award of the tribunal and prays for dismissal of the Civil Miscellaneous Appeal.

7.PW1 is the injured as well as the eye witness to the accident. A criminal case was registered against the driver of the Tipper Lorry. Ex.A1 FIR stands registered based on the complaint given by PW1. PW1 has given evidence stating that in the alleged accident, he sustained injuries all over the body and also sustained crush injury on his right leg and due to it, his right leg was amputated and thereby, he had permanent disability. It is not in dispute that at the time of accident, the injured was 26 years. It is also not in dispute, the injured was working in Singapore and he was getting Rs.27,000/- per month. Since, no reliable document has been produced to prove the income of the injured, the tribunal has rightly fixed Rs.10,000/- towards the monthly income of the injured claimant.

8.PW2 Dr.Ravikumar has deposed that he examined the claimant and found that the claimant had sustained grievous injuries in the accident and his right leg was completely crushed and due to it, his right leg was amputated and he assessed 80% permanent disablement and issued Ex.P4 Wound Certificate to the claimant. Based on the evidence, the Tribunal has awarded **Rs.20,40,000/-** under the head of loss of income. Further, the Tribunal awarded Rs.1,00,000/- towards pain and sufferings; Rs.13,180/- for transportation as per Ex.P13; Rs.1,00,000/- towards future medical expenses; Rs.36,400/- towards medical expenses as per Exs.P10 and P12; Rs.10,000 towards nutrition; Rs.1,00,000/- for towards loss of marital life. In total,



the tribunal has awarded Rs.23,99,580/- as compensation to the claimant.

9.It is mainly argued on the side of the appellant Insurance Company that the tribunal without any basis, has awarded Rs.1,00,000/- under the head of future medical expenses. On perusal of Ex.P11 quotation, it is stated that for fixing artificial leg, the amount comes to Rs.1,10,000/-. It is to be noted here that Ex.P11 is only a quotation and hence, the same cannot be taken into consideration by this court. Hence, Rs.1,00,000/- awarded under the head of future medical expenses is liable to be set aside and accordingly, it is set aside. In respect of other heads, the award of the tribunal is reasonable one and accordingly, they are confirmed. In total, the 1st respondent/claimant is entitled to Rs.22,99,580/- together with interest at the rate of 7.5% p.a. from the date of petition, till the date of realization.

10.In the result, this Civil Miscellaneous Appeal is partly allowed. The award is reduced to **Rs.22,99,580/-** from Rs.23,99,580/- The appellant Insurance Company is directed to deposit the modified award amount together with interest @ 7.5% p.a. from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the 1st respondent/claimant is entitled to withdraw the entire amount together with accrued interest and costs, without filing any formal petition before the tribunal. Excess amount if any, shall be refunded to the appellant Insurance Company. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

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To

1.The Motor Accidents Claims Tribunal/
Sub Court, Pudukkottai.

2.The Record Keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai. (2C)
+1CC TO MR.K.BHASKARAN, ADVOCATE, SR NO.6406