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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	11.03.2021
Date of Judgment	21.06.2021

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.644 of 2014
and
MP(MD)No.1 of 2014

M/s.ICICI Lombard General
Insurance Company Limited,
D-1, A.R.Plaza,
No.16, North Veli Street,
Madurai. : Appellant/2nd Respondent

Vs.

1.Rasili : 1st Respondent/Petitioner

2.M.Subramanian : 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (III Additional Sub Court), Trichy, in MCOP No.342 of 2008, dated 27.09.2012.

For Appellant : Mr.S.Srinivasa Raghavan

For 1st Respondent : Mr.N.Sudhagar Nagaraj

For 2nd Responden : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accident Claims Tribunal (III Additional Sub Court), Trichy, in MCOP No.342 of 2008, dated 27.09.2012.

2.The short facts of the case is that on 27.04.2007 at about 19.30 hours, the injured claimant was travelling as a load man in the Mini Door Auto TN-49-M-8035 and when they were coming on Solagampatti-Thirunedungulam main road, near Mangavanam new bridge, the Minor Door Load Auto driver, drove it in a rash and negligent manner and lost control and dashed against another vehicle, coming in the opposite direction. Due to the impact, the Mini Door Auto was capsized with its load of fish and the claimant sustained injuries

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all over his body, especially his left hand was crushed. A claim petition was filed by the claimant seeking compensation of Rs.6,00,000/- for the injuries sustained in the accident.

3.In the counter filed by the Appellant Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimant, 2 witnesses were examined and marked 8 documents. On the side of the Appellant Insurance Company, 1 witness was examined and no document was marked.

5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.6,19,400/- together with interest @ 7.5% p.a.

6.Heard both sides and perused the materials available on record.

7.The dispute is in respect of liability and quantum. The learned counsel appearing for the appellant/2nd respondent argued that there is no proof to show that the injured travelled in the insured vehicle as a load man and hence, fastening the liability on the of the appellant/2nd respondent is impermissible and prays that the Civil Miscellaneous Appeal has to be allowed.

8.On the other hand, the learned counsel appearing for the 1st respondent/claimant submitted that one injured treated as load man in the offending vehicle and the offending vehicle had insurance coverage on the date of accident, and hence, the Insurance Company is liable to pay the compensation to the injured and prays that the Civil Miscellaneous Appeal has to be dismissed.

9.In respect of the accident, the injured gave Ex.P1 complaint. On perusal of Ex.P1 (Complaint), it is stated that at the time of accident, the injured travelled as a load man for loading fish and only due to rash and negligent driving, the accident occurred. PW1 during his evidence also stated that at the time of accident, he travelled as a load man in the offending vehicle. The competent person to speak about the occupation of the injured person, is the owner of the vehicle. In this case, the owner of the vehicle did not appear and contest the case before the tribunal. Hence, it presumes that the owner of the vehicle admitted that at the time of accident, the injured travelled as a load man in the offending vehicle.

10.On perusal of Ex.P1 and the evidence of PW1, it reveals that at the time of accident, the injured was travelling as a load man in the offending vehicle. Further, it was already decided that the accident occurred due to the rash ad negligent driving of the

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offending vehicle. Further perusal of Ex.P6, insurance policy, it reveals that admittedly, premium was paid for insurance coverage. Hence, the offending vehicle had insurance coverage at the time of accident. Therefore, it is held that the appellant Insurance Company is liable to pay the compensation.

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11.It is seen from the records that PW2/Doctor stated that he assessed the disability of the injured at 40% and it is possible for the injured to do the as usual work and it is also not possible for him to do the hard work. Hence, this court is of the view that there is no functional disability for the injured and hence, the multiplier method adopted by the tribunal for arriving the loss of income of the injured is not correct. Hence, this court is of the view that the injured is entitled Rs.3,000/- for 1% permanent disability. Therefore, the injured is entitled to Rs.1,20,000/- for 40% permanent disability, instead of Rs.3,45,600/-. Further, the injured is not entitled to get any amount towards loss of future income. Accordingly, the award of the tribunal is re-calculated as under:-

Head	Award of the Tribunal	Award of this court
Loss of Income for 40% disability	3,45,600/-	1,20,000/-
Medical expenses	25,000/-	25,000/-
Transportation	5,000/-	5,000/-
Pain and Sufferings	25,000/-	25,000/-
Nutrition	5,000/-	5,000/-
Loss of income during treatment period	10,000/-	20,000/-
Attender charges	5,000/-	5,000/-
Damages to cloths	1,000/-	1,000/-
Future medical expenses	25,000/-	25,000/-
Loss of future income	1,72,800/-	-
Total	**6,19,400/-**	**2,31,000/-**

Accordingly, the claimant is entitled to Rs.2,31,000/- together with interest at the rate of 7.5% p.a.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is reduced to Rs.2,31,000/-. 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 modified

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amount together with accrued interest and costs. Excess amount if any available shall be refunded to the appellant Insurance Company. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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<u>Note :</u>

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The III Additional Subordinate Judge,
   The Motor Accident Claims Tribunal/
   III Additional Sub Court, Trichy

2.The Record Keeper,
   VR Section,
   Madurai Bench of Madras High Court,
   Madurai.

+1 CC to M/s.N.SUDHAKAR NAGARAJ, Advocate (SR-19834[F] dated 22/06/2021)

+1 CC to M/s.S.SRINIVASARAGHAVAN, Advocate (SR-19860[F] dated 22/06/2021)

<u>CMA(MD)No.644 of 2014</u>
21.06.2021

RD(16.08.2021) 4P 6C

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