BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :01.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.1101 of 2018
and
CMP(MD)No.11266 of 2018

Branch Manager,
Tuticorin Branch,
M/s.Iffco-Tokio General Insurance Company Ltd.,
3rd Floor, Tripura Arcade,
No.75, Thiruvenkadam Road,
Palayamkottai,
Thiruneveli District. : Appellant/2nd Respondent

Vs.

1.R.Palanichamy : R1/Petitioner

2.T.Raja : R2/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the award, dated 18.07.2018 made in MCOP No.948 of 2014 on the file of Motor Accident Claims Tribunal (Special Subordinate Judge), Madurai.

For Appellant : Mr.V.Sakthivel

For 1st Respondent : Mr.T.Amjadkhan
for M/s.APN Law Associates

For 2nd Respondent : No appearance

JUDGMENT

Challenge made in this appeal is to the award passed by the Motor Accident Claims Tribunal (Special Sub Court) Madurai, in MCOP No.948 of 2014, dated 18.07.2018.

2.The brief facts of the case are that on 08.01.2014 am, when the claimant was driving the Eicher Lorry TN59-AF-1435 towards Tuticorin from Madurai, on the Madurai-Tuticorin National Highways Four Way Track, the Innova Car TN-69-Q-1940 towards Madurai came in a heavy speed, suddenly lost control, hit on the median, breached, took off and flew about 20 feet and thereafter, smashed on the front right portion of the Eicher Lorry TN-59-AF-1435, which was driven by the claimant. In the accident, the driver of the Innova Car died on the spot, while the claimant sustained fracture injuries. The injured claimant filed a claim petition seeking compensation of Rs.24,63,334/- on the ground that the driver of the Car was responsible for the accident.

3.The claimant has stated that at the time of the accident, his age was 56 and he was working as a Driver and was earning Rs.30,000/- per month. A criminal case in Crime No.6 of 2014 was registered by Ettayapuram Police.

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

5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Car was responsible for the accident and awarded compensation of Rs.2,99,000/- with interest @ 7.5 % p.a. Aggrieved by the award of the tribunal, the appellant Insurance Company is before this court.

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

7.It is mainly contended by the learned counsel for the appellant that the quantum of award is on the higher side, so the quantum is to be reduced. On the other hand, the learned counsel for the 1st respondent/claimant submitted that the award is reasonable, which does not warrant any interference of this court.

8.It is seen from the records that at the time of accident, the offending vehicle was insured with the appellant Insurance Company. Hence, the Appellant Insurance Company is liable to pay the compensation to the claimant. In this case, PW1 is the injured as well as the eye witness to the accident. A criminal case was registered against the driver of the Car. Ex.P1 FIR stands registered based on the complaint given by PW1. Ex.P7 charge sheet would show that after investigation, the police filed a final report against the Driver of the Car. As the Driver of the car is no more, the fate of investigation also abated. PW1 has given evidence stating that he was first admitted to the Government Hospital, Tuticorin and thereafter, he was taking treatment in Madurai Institute of Orthopedics and Traumatology and he underwent surgery, fixing of plates, Bolts etc. and he spent Rs.1,75,000/- towards medical expenses.

9.In this case, the claimant was directed to appear before the Medical Board to assess the disability. The Medical Board on examination of the claimant, assessed his disability at 30% and issued Ex.C1. Based on the same, the Tribunal has come to the conclusion that the claimant has suffered 30% disability and awarded **Rs.1,20,000/-** under the head.

10.It is to be noted here that in this case, the Doctor has assessed the disability of the claimant as 30%. As per the judgment reported in **2013(2) TAN MAC 583 (National Insurance Company Limited Vs. G.Ramesh)**, for 1% of disability, the claimant is entitled to Rs.3,000/-. Hence, it is held that the claimant is only entitled Rs.90,000/- for 30% disability at the rate of 3,000/- for 1%.

11.In this case, to prove the nature of injuries and treatment, the claimant filed Exs.P8, P11, P21 and P22. On perusal of the above records, it reveals that the claimant had sustained fracture injuries and took treatment in the private hospital. It is to be noted that in this case, the claimant has not produced the originals of Exs.P9 and P10 and he only produced the Xerox copy of Exs.P9 and P10. The counsel for the claimant argued that the claimant lost the originals Exs.P9 and P10. To prove it, no complaint was given before the concerned police. No proper document was filed. Hence, it is held that the claimant failed to prove that Exs.P9 and P10 were lost. Hence, the argument put forth on the side of the claimant stating that he lost Exs.P9 and P10 and hence, he produced the Xerox copy of Exs.P9 and P10 is not at all acceptable.

12.However, considering the injuries sustained by the claimant and the treatment taken by the claimant, it reveals that he will spend some amount towards medical expenses. Hence, considering the treatment undertaken by the claimant, this court finds that the claimant is entitled to only Rs,76,000/- towards medical expenses. Accordingly, Rs.95,000/- awarded by the tribunal towards medical expenses is reduced to Rs.76,000/-. In sofar as the other heads, the award of the tribunal are reasonable and hence, they are confirmed. Accordingly, the compensation awarded by the tribunal is recalculated as follows:-

Head	Award of the Tribunal	Award of this court
Disability for 30% (Rs.3,000/- x 30%)	1,20,000/-	90,000/-
Pain and suffering	30,000/-	30,000/-
Nourishment	7,000/-	7,000/-

Attending charges	4,000/-	4,000/-
Loss of income during treatment period	40,000/-	40,000/-
Damages to clothes	1,000/-	1,000/-
Transportation	2,000/-	2,000/-
Medical expenses	95,000/-	76,000/-
In total	**2,99,000/-**	**2,50,000/-**

13.In the result, the Civil Miscellaneous Appeal is **partly allowed** and the award of Rs.2,99,000/- is reduced to **Rs.2,50,000/-.** The interest at the rate of 7.5% per annum awarded by the tribunal is maintained. The Appellant Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, 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 claimant is permitted to withdraw the modified amount, less the amount already withdrawn without filing any formal petition before the tribunal. Excess amount if any shall be refunded to the appellant Insurance company. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Madurai.

2.The Record Keeper-2copies
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.V.SAKTHIVEL, Advocate (SR-2735[F] dated 02/02/2021)

+1 CC to M/s.APN LAW ASSOCIATES, Advocate (SR-2707[F] dated 02/02/2021)

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