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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3693 of 2021
and
C.M.P.Nos.21689 of 2021 & 7063 of 2022

The United India Insurance Co., Ltd.,
Nanjappa Road, Park Gate,
Coimbatore. ...Appellant

Vs.

1.S.Padmanabhan
2.M.Chandran
3.J.Ansar Ali ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.1359 of 2017 on 27.08.2019 on the file of the learned Motor Accident Claims Tribunal (Special Subordinate Judge) Coimbatore.

For Appellant : Mr.Murali for Mr.J.Chandran

For Respondents : Mr.K.Myilsamy for R1

R2 & R3 – Served – No Appearance

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JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The Insurance Company is on appeal. Challenge is to the award of the Tribunal granting a sum of Rs.39,43,175/- for the disabilities suffered by the 1st respondent due to the injuries sustained by him in a road accident that occurred on 17.03.2017 at about 1 a.m.

2.According to the claimant, while he was travelling in a car bearing registration No.TN 43 E 2320 on the Annur to Mettupalayam Road, a lorry bearing registration No.TN 43 A 5306 belonging to the 2nd respondent, insured with the 3rd respondent and driven by the 1st respondent in a rash and negligent manner dashed against the car. As a result of the accident, the 1st respondent herein suffered grevious injuries and was admitted in the Government Hospital, Coimbatore and thereafter, he was shifted to K.G.Hospital, Coimbatore wherein, he was an inpatient for 10 days from 17.03.2017 to 27.03.2017. The claimant has suffered permenant disability having lost vision in his right eye. The claimant, who was aged about 53 years at the time of the accident was a building contractor and was earning a sum of Rs.60,000/- per month. As a result of the disabilities, the

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claimant is unable to carry on his work as usual and thus, there is a monetory loss to the family. Hence, the claimants sought for compensation of Rs.30,00,000/-.

3.The claim was resisted by the 3rd respondent / Insurance company contending that the accident did not happen in the manner suggested by the claimant. It was claimed that the accident happened due to the rash and negligent driving by the driver of the car. Hence, the Insurance Company is not liable to pay compensation. It was also contended that the compensation claimed is on the higher side and the disability that is claimed is also on the higher side.

4.Before the Tribunal, the wife of the claimant was examined as P.W.1, one Doctor Sekar, who treated the claimant was eamined as P.W.2 and one Chandramohan was examined as P.W.3. Exs.P1 to P12 were marked. The Insurance Company did not place any evidence, either oral or documentary, before the Tribunal. The Tribunal assessed the disability at 70% based ont the evidence of the Doctor. Admittedly, the claimant had lost

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eye sight in one eye. His understanding capacity has also been diminished and he has been represented by his wife even in the claim proceedings.

5.The Tribunal took the monthly income of the claimant at Rs.35,000/- per month and awarded a sum of Rs.32,34,000/- for future loss of income due to the permanent disability. The Tribunal awarded Rs.1,84,175/-, based on medical bills, for medical expenses, Rs.2,00,000/- towards loss of amenities, Rs.3,00,000/-for pain and suffering, Rs.10,000/- towards transportation to hospital, Rs.10,000/- for extra nourishment and Rs.5,000/- towards damages to clothing and articles. Thus, the total compensation awarded by the Tribunal worked out to Rs.39,43,175/-. Aggrieved the Insurance Company is on appeal.

6.Mr.V.Murali, learned counsel appearing for the appellant / Insurance Company would vehemently contend that the disability taken at 70% is on the higher side. He would also submit that the claimant was an inpatient only for 10 days. The learned counsel would also add that the Tribunal erred in fixing Rs.35,000/- as monthly income in the absence of

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any evidence.

7.Contending contra, Mr.K.Myilsamy, learned counsel for the respondent / claimant would submit that the Doctor, who had treated the injured claimant has been examined and he has spoken about the disability. From the discharge summary, it could be seen that he has lost vision in one eye. Therefore, according to the learned counsel, the percentage of disability fixed by the Tribunal does not call for any interference at our hands. The learned counsel would also add that the income of Rs.35,000/- per month is reasonable in the cirumstances and the Tribunal has chosen to rely upon the oral evience of P.W.1 in support of its conclusion to fix the monthly income at Rs.35,000/-. We have considered the rival submissions.

8.We do not find any ground to interfere with the percentage of disability fixed by the Tribunal. A perusal of the discharge summary and the evidence of P.W.2 / Doctor would justify the conclusion of the Tribunal fixing the disability at 70%. However, on the question of income, we are unable to sustain the conclusion of the Tribunal in as much as there is no

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evidence for the income of the injured claimant. The Tribunal has taken Rs.35,000/- as monthly income, considering the age of the claimant. The claim of the petitioner was that he was earning Rs.60,000/- per month. However, there is no reliable doumentary evidence in support of the conclusion. If income is Rs.60,000/- per month, income tax should have been paid or atleast profession tax should have been paid to the local authority. There is no evidence for payment either income tax or profession tax by the injured claimant. In such circumstances, we are unable to sustain the fixation of the income at Rs.35,000/- per month.

9.Considering the fact that the accident had occurred in March, 2017 and the fact that the injured claimant was a Civil Engineering Contractor, we fixed the notional income at Rs.20,000/- per month. If the notional income is taken at Rs.20,000/-, the future loss of income due to the disability would be Rs.2,40,000 X 70 X 11 = Rs.18,48,000/-. We do not see any reason to interefere with the amounts awarded other the other heads namely, pain and suffering, loss of amenities, medical expenses etc. Therefore, the total compensation works out to Rs.25,57,175/-.

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10.In view of the above, this appeal is partly allowed, the total compensation awarded is reduced to Rs.25,57,175/-. No costs. Consequently, connected miscellaneous petitions are closed. Pursuant to the order in the stay petition, the Insurance Company has deposited 50% of the award amount with proportionate interest and cost. The Insurance Company will have eight weeks time, from the date of receipt of a copy of this order, to deposit the balance amount. On such deposit, the claimant is permitted to withdraw the entire amount, so deposited.

(R.S.M.,J.) **(S.S.K.,J.)**
15.12.2022

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Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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R.SUBRAMANIAN, J.
and
MR.SATHI KUMAR SUKUMARA KURUP.J.

KKN

To:-

The Motor Accident Claims Tribunal,
Special Sub-ordinate Court,
Coimbatore.

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and
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