



IN THE HIGH COURT OF JUDICATURE OF MADRAS
DATED : **31.10.2022**

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1480 of 2020

and

C.M.P.No.10826 of 2020

United India Insurance Company Ltd.,
No.18/116, Sree Saravana Complex,
Mettupalayam Road,
Thudiyallur, Coimbatore – 641 034. ...Appellant/3rd Respondent

-Vs-

1.M.Ruthra Moorthy	...1 st Respondent/Petitioner
2.A.Senthilkumar	...2 nd Respondent/1 st Respondent
3.A.Senthilkumar	... 3 rd Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal is filed against the Award and Decree dated 23.10.2019 made in M.C.O.P.No.547 of 2017 on the file of the learned (Special Subordinate Judge), Motor Accidents Claims Tribunal, Coimbatore.

For Appellant : Mr.D.Baskar

For Respondent : Mr.I.Kasirajan

Not ready in notice regarding



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R2 and R3

JUDGMENT

This appeal has been filed by the Insurance Company challenging the Award passed by the learned (Special Subordinate Judge), Motor Accidents Claims Tribunal, Coimbatore, in M.C.O.P.No.547 of 2017 on the ground that the quantum of compensation granted was on the higher side.

2.The learned counsel for the Insurance Company would submit that the injuries suffered by the claimant was only a fracture in the femur and the same was not a permanent disablement, for which the Tribunal has awarded a sum of Rs.3,00,000/- under the head of pain and sufferings, Rs.1,00,000/- under the head of loss of amenities, when there is no proof to show that he had suffered post injury disablement which has prevented him from continuing with his life as before.



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3.The learned counsel for the 1st respondent would submit that the petitioner is unable to function like before and consequently, his earning capacity is also drastically reduced. Therefore, he would argue that there is no necessity to reconsider the Award passed.

4.The appellant Insurance Company is primarily aggrieved by the amounts awarded under the head of pain and sufferings. The claimant /1st respondent has suffered a left supracondylar fractures of the femur compound comminuted grade III B fracture exposing bone right site with contamination and quadriceps muscle tear, left proximal tibia shaft fracture as detailed in Ex.P.3 - Discharge Summary. There is no evidence to show that the claimant had sustained a permanent disablement or partial disablement on account of these injuries. The petitioner has not examined any Doctor to prove his disablement. The Tribunal has awarded a huge sum of Rs.3,00,000/- under the head of pain and sufferings, when the petitioner has neither suffered permanent disability nor had he



been prevented from continuing with his work as before, post the accident.

5. Therefore, on hearing both counsels, this Court is of the view that a sum of Rs.60,000/- alone be granted under the head of pain and sufferings. Since the future prospects of the petitioner is not shown to have been affected, the award of Rs.1,00,000/- under the head of loss of amenities has to be necessarily set aside. The Court feels that the claimant should be given a one more month's compensation under the head of loss of income. Therefore, the Award is modified as follows:

Loss of Income Rs.8,000/- X 5	:Rs. 40,000/-
Compensation for grievous injury	:Rs. 50,000/-
Medical Bills	:Rs.2,33,115/-
Pain and Sufferings	:Rs. 60,000/-
Transportation to Hospital	:Rs. 10,000/-
Extra Nourishment	:Rs. 10,000/-
Damage to Clothing	:Rs. 5,000/-

Total	:Rs.4,08,115/-



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6.The Civil Miscellaneous Appeal is allowed. The Insurance Company is directed to deposit the entire compensation amount, with interest @ 7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.547 of 2017 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Coimbatore, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the claimant is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications.

7.The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee



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has been produced by the claimant. No costs. Consequently,
connected Civil Miscellaneous Petition is closed.

31.10.2022

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

To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.



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P.T. ASHA, J,

mps

C.M.A.No.1480 of 2020
and
C.M.P.No.10826 of 2020

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C.M.P.No.10195 of 2022

in

C.M.A.No.1480 of 2020

P.T. ASHA, J,

In the above matter, this Court by order dated 03.03.2022 was pleased to partly allow the Civil Miscellaneous Appeal filed by the Insurance Company by reducing the compensation awarded by the Tribunal from a sum of Rs.7,40,115/- to a sum of Rs.3,98,115/-.

2.The learned counsel for the claimant/1st respondent had not appeared before this Court. Therefore, an *ex parte* order came to be passed. An affidavit is filed by the 1st respondent stating that the Counsel by an oversight had failed to notice the listing of the case on 03.03.2022 and had only noticed this omission when the order dated 20.04.2022 was received. Therefore, a delay of 33 days had occurred in setting aside the *ex parte* order. Therefore, this C.M.P.No.10195 of 2022 was filed for condone the delay.



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P.T. ASHA, J,

mps

3.Today, when the matter came up for hearing the learned counsel for the appellant had no objection to the delay being condoned and ex parte order being set aside provided the 1st respondent/claimant was ready to argue the matter today. Therefore, the delay is condoned and the *ex parte* order dated 03.03.2022 passed in the above appeal is set aside. The appeal is also taken up for hearing today.

The Registry is directed to number the set aside petition which has been allowed today.

31.10.2022

mps

C.M.P.No.10195 of 2022
in



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C.M.A.No.1480 of 2020

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