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C.M.A.No.3699 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.3699 of 2021

and

C.M.P.No.21713 of 2021

The New India Assurance Company Ltd.,
3rd Party Hub, Officer's Line,
Vellore.

... Appellant

vs.

1.Karunakaran

2.A.Ganesh

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against decree and judgment dated 14.07.2021 made in M.C.O.P.No.421 of 2016 on the file of the Motor Accident Claims Tribunal, II Additional District Court, Vellore @ Ranipet.



C.M.A.No.3699 of 2021

For Appellant : Mr.S.Dhakshnamoorthy
For Respondent-1 : Mr.Vasudevan for
Mr.E.Kannadasan
For Respondent-2 : Served-No Appearance

JUDGMENT

The insurance company is the appellant before this Court challenging the award passed by the Motor Accident Claims Tribunal (II Additional District Judge), Vellore in M.C.O.P.No.421 of 2016 on the ground of liability as well as quantum.

2. The Tribunal below had awarded a sum of Rs.3,42,500/- as compensation for the injuries sustained by the 1st respondent herein/claimant.

3. The parties are referred to in the same ranking as before the Tribunal.



C.M.A.No.3699 of 2021

WEB COPY

4. The petitioner has filed the above claim petition seeking compensation for the injuries sustained by him in a road traffic accident. It is his case that he as a cleaner was travelling in a lorry bearing Reg.No.TN-73-C-1333, on 21.8.2016, from Maraimalai Nagar to Bangalore. The lorry which was driven by its driver in a rash and negligent manner capsized when the driver has applied a sudden brake. On account of this accident, the petitioner had sustained multiple injuries, thereafter he was taken to Government Hospital Kancheepuram from where he was taken to Chengalpattu Government Hospital. The 1st respondent is the owner of the lorry and 2nd respondent is the insurer of the vehicle. The 1st respondent remained *ex-parte* and the 2nd respondent/insurance company had filed the counter rebutting the claim and stating that the petitioner was not a cleaner in the lorry belonging to the 1st respondent and was an unauthorised passenger. They had denied the liability to pay compensation.



C.M.A.No.3699 of 2021

WEB COPY

5. The Tribunal below on considering the evidence had held negligence on the driver of the 1st respondent vehicle and had held that the petitioner was a cleaner in the 1st respondent vehicle relying on the evidence of PW2.

6. The Tribunal arrived at a compensation of Rs.3,42,500/- on the basis that the petitioner had been assessed to have sustained 50% disability. Challenging this award, the insurance company is before this Court.

7. The learned counsel for the appellant would submit that the First Information Report was given by a person who claims to be a cleaner in the lorry of the 2nd respondent herein. The claimant was only a gratuitous passenger. Therefore, the insurance company is not liable to pay compensation to the claimant. Further, the claimant had not sustained any major disability and he has suffered only simple injuries, however, the Tribunal has assessed the disability at 50%, without any materials being



C.M.A.No.3699 of 2021

WEB COPY

produced before it. He would therefore submit that the award has to be set aside.

8. Per contra, Mr.Vasudevan, learned counsel appearing on behalf for the first respondent/claimant would submit that the Insurance Company has not taken the defence that the injuries sustained by the first respondent was a simple injury. In fact, the Insurance Company has not made any comment on the injuries sustained by the first respondent. It is only now in this appeal, such a stand has been taken by the appellant-Insurance Company. He would further submit that the Medical Board, after assessing the first respondent, had assessed the disability at 50%. He would submit that Ex.P2 would clearly demonstrate the injuries and its permanent nature. This document if read along with the report of the Dean, Government Vellore Medical College, Vellore under a cover of letter dated 11.01.2021 in Na.Ka.No.8271/மரு/2020 addressed to the learned II Additional District Sessions Judge, Ranipet, would go to show that the first respondent has sustained an injury, which is of a grievous nature. He would submit that the



C.M.A.No.3699 of 2021

WEB COPY

appellant-Insurance Company has not objected to marking of any of the document and they cannot seek to question the correctness or otherwise of the documents. He would therefore submit that once the injury and the disability suffered by the first respondent has been established, the appellant cannot question the award passed.

9. Heard the learned counsel for the appellant-Insurance Company and the learned counsel appearing for the respondents 1 and 2.

10. As regards the first defence of negligence is concerned, this Court is unable to accept the arguments of the appellant counsel on the ground that PW2 who is the owner of the lorry has clearly deposed that the claimant was the cleaner of the lorry, in which he has travelled on the ill-fated day. This evidence has neither been rebutted in cross-examination nor has the insurance company adduced any other evidence to disprove the statement. Therefore, it has to be concluded that the claimant was working as a cleaner with the 2nd^t respondent herein.



C.M.A.No.3699 of 2021

WEB COPY

11. Ex.P2, which is the Accident Register of the Government Hospital, Kanchipuram, would show that on 21.08.2016, the first respondent has been admitted in the said hospital at around 15.30 hours on account of a road traffic accident. The injuries that are noted in the said register are as follows:-

*C/o. Alleged H/O RTA while going in lorry
O/E Scratch on left side neck
? # Forearm
Midshaft ulnar #
dislocation of head of radius*

The said injuries have been described as being grievous in nature.

12. The Court also saw the claimant and it is clearly evident that his hand has been badly damaged, the fracture has mal-united and therefore, the claimant has suffered disability to some extent which would be an impediment for his future activities. He is stated to be a cleaner. This fact has not been vehemently contested by the appellant-Insurance Company. The injury will definitely act as a fetter to the claimant continuing to work as a cleaner. However, from the evidence of P.W1, it is seen that he has



C.M.A.No.3699 of 2021

WEB COPY

chosen not to take treatment from the hospital, but has chosen to undergo the native Puttur treatment. This treatment involves a cast being put around the fracture to assist its healings. In the evidence of P.W1, he has stated that he has only undergone this treatment. Therefore, if the first respondent/claimant has suffered any discomfort, he has also contributed to the same by not following the proper medical advice. The Tribunal has relied entirely upon the report and the disability certificate issued by the Medical Board. A perusal of this document does not indicate as to how the Board has assessed the disability at 50% and further, it is totally silent upon the impact of the injuries of the day-day-today activities of the first respondent-claimant. Therefore, the disability has to be definitely reduced to 25%. Accordingly, the amount due under the head of "Disability" would be $\text{Rs.}5,000 \times 25\% = \text{Rs.}1,25,000/-$ and the Compensation awarded by the Tribunal is reworked as follows:



C.M.A.No.3699 of 2021

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Transportation, Extra Nourishment and Miscellaneous Expenses	10,000	10,000	Confirmed
2	Attender Charges	-	-	-
3	Medical Expenses	-	-	-
4	Disability	2,50,000	1,25,000	Reduced
5	Damages to the Articles	2,500	2,500	Confirmed
6	Pain and Sufferings	50,000	10,000	Reduced
7	Loss of Amenities	10,000	10,000	Confirmed
8	Temporary Loss of Income	20,000	20,000	Confirmed
	TOTAL	3,42,500	1,67,500	Reduced

13. In the result, this Civil Miscellaneous Appeal is allowed and the compensation of **Rs.3,42,500/-** awarded by the Tribunal is hereby **reduced** to a sum of **Rs.1,67,500/-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the said amount **Rs.1,67,500/-** to the credit of M.C.O.P.No.421 of 2016 together with interest @ 7.5% per annum from



C.M.A.No.3699 of 2021

WEB COPY

the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgement. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn by the first respondent/claimant. The Insurance Company is permitted to withdraw any excess amount, if any deposited by them. The first respondent/ claimant is directed to pay the Court fee for the compensation amount as awarded by this Court. The Tribunal below shall not disburse the compensation amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. In other respects, the impugned Award of the Tribunal is hereby confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.06.2022

Index : Yes
Speaking / Non Speaking

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10/12



C.M.A.No.3699 of 2021

WEB COPY

To

1. The II Additional District Court,
Vellore @ Ranipet.
2. The Section Officer,
V.R.Section, High Court,
Madras.



WEB COPY



C.M.A.No.3699 of 2021

P.T.ASHA, J.,

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C.M.A.No.3699 of 2021
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28.06.2022