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C.M.A.No.1366 of 2013

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1366 of 2013

and

M.P.No.1 of 2013

Branch Manager,
United India Insurance Co. Ltd.,
Meenakshi Complex, II Floor,
No.28, Milam Road, Tindivanam. ... Appellant/2nd Petitioner

Vs.

1.Govindasamy
2.Narayanasamy ... Respondents/Respondents
[set *ex-parte* by the Claims Tribunal]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 27.09.2005 made in MACTOP No.112 of 2004 (Before Sub Court OP No.1116 of 2001) passed by the Motor Accident Claims Tribunal Judge, on the file of Fast Track Judge No.1, Tindivanam (Motor Accident Claims Tribunal, Tindivanam).

For Appellant : Mr.M.J.Vijayaraaghavan

For Respondents : Not Ready in Notice [R1]
Exparte vide JR (AS) order dt.
03.04.2023 [R2]



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JUDGEMENT

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Challenging the award passed in MACTOP No.112 of 2004 (Before Sub Court OP No.1116 of 2001) dated 27.09.2005 by the Motor Accident Claims Tribunal Judge, on the file of Fast Track Judge No.1, Tindivanam (Motor Accident Claims Tribunal, Tindivanam), the appellant/insurance company is before this Court.

2. On 23.12.2000 at about 04.30 hours, when the claimant was returning from his home near Mailam Road at Tindivanam G.S.T. Road, a vehicle bearing Reg.No.TCM 1359, owned by the second respondent and insured with the appellant/insurance company, driven by its in a rash and negligent manner and hit the claimant-pedestrian, thereby he was thrown away from the place and he sustained grievous injuries in the head and all over the body. Thereafter, he filed a claim petition claiming a sum of Rs.7,00,000/- in MACTOP.No.112 of 2004.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2. No witnesses were examined nor any documents were marked on the side of the appellant/second respondent. After adjudication, the Tribunal awarded a sum of Rs.1,99,200/- with an



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interest rate of 7.5% p.a. Aggrieved by the said order, the insurance company is before this Court.

4. The learned counsel appearing for the appellant submitted that the qualified doctor assessed the percentage of disability of the claimant at 46%, however, by fixing the disability at 40%, the Tribunal awarded a sum of Rs.40,000/-. That apart, the Tribunal awarded a sum of Rs.4,20,000/- towards loss of earning power. He also submitted that awarding compensation under the above two heads are wholly unsustainable, which requires interference of this Court. Further, he submitted that the other heads awarded by the Tribunal are just and reasonable, which does not require any interference. Accordingly, he prays for allowing the appeal.

5. Though this appeal has been filed in the year 2013, the appellant has not taken any steps to service notice on the respondent. Considering the pendency of this appeal, this Court is inclined to dispose of this appeal based on the materials available on record.

6. The factum of the accident is not disputed by the parties and so also



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the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. A perusal of the award and the documents filed by the claimant reveals that, immediately after the accident, the claimant was admitted in the hospital and the back side and front side of skull was removed and operation was performed and he also sustained fracture injury on his right foot. After the accident and the operation, the claimant frequently suffered from fits and he was not in a position to perform his driver job, which he was carrying on before the accident, because of the injuries sustained by him in the said accident. Hence, this Court is of view that the claimant has suffered functional disability, thereby the Tribunal has awarded compensation towards loss of earning power and disability, which is wholly sustainable and just and reasonable and so also the compensation awarded under the other heads, which does not require any interference. Therefore, this Court is not inclined to interfere with the said compensation awarded by the Tribunal. Hence, the appeal is liable to be dismissed.

7. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 27.09.2005 made in MACTOP No.112 of 2004 (Before Sub Court OP No.1116 of 2001) passed by the Motor Accident



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Claims Tribunal Judge, on the file of Fast Track Judge No.1, Tindivanam (Motor Accident Claims Tribunal, Tindivanam) is confirmed. Further, the appellant is directed to deposit the entire compensation amount awarded by the Tribunal to the credit of MACTOP.No.112 of 2004 within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to disburse the amount directly to the bank account of the claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

16.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accidents Claims Tribunal,
Fast Track Judge No.1,
Tindivanam.

M.DHANDAPANI, J.,

sp



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2.The Section Officer,
V.R.Section,
High Court, Madras.

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