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CMA.No. 816 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 816 of 2023

and

CMP.Nos. 5319 & 7545 of 2023.

The Manager
National Insurance Company Limited
Registered Office No.3,
Middleton Veedhi
Post Box No. 9229,
Kolkatta-700071.

Branch Office Address:

2nd Floor, 81-D,
Near Old Bus Stand
Tiruchengode Town and Taluk
Namakkal District.

...Appellant

Versus

1. Karthik (a) Shanmuga Sundaram
2. Managing Director
Mohan Tractors (P) Ltd.
Its office 4 m distance
Bharat Petroleum Pump
Hisaar Salai, Roahdak
Haryana State-124 001.

Respondents



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Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, prays to set aside the award and decree dated 22.12.2021 and made in MCOP.No. 176 of 2017 on the file of Motor Accident Claims Tribunal, Tiruchengode.

For Appellant : Mr.S.Vadivel
For Respondent-1 : Mr.K.A. Vimal Kumar

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation awarded in MCOP.No. 176 of 2017, dated 22.12.2021, on the file of Motor Accident Claims Tribunal, Tiruchengode.

2. This is a case of injury sustained by the Claimant.

3. On 27.07.2016, while the claimant was travelling in the Mahendria Bolero Car on the Salem to Coimbatore, NH-47, the driver of the Container Lorry bearing Registration No. HR-55-R-6890, drove the vehicle in a rash and negligent manner came in the same direction and hit



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against the vehicle of the Claimant. Due to the impact, the Claimant sustained grievous injuries, such as C5 Flexion Tear Drop Fracture With Asia "A" Neurology With Cord Contusion, Fracture Mid 3rd Left Clavicle, Fracture 11th RIB Osteo Chondral Junction and multiple injuries all over his body. The Claimant was aged about 24 years and was working as Sales Supervisor at Ammani Ammal Poultry Farm, Thuduppathi, Perundurai and earning a sum of Rs.12,000/- per month. According to the Claimant, he suffered 100% permanent disabilities and he therefore, filed the claim petition claiming a sum of Rs.90,00,000/- as compensation for the injuries sustained by him in the accident.

4. The second respondent herein the owner of the Container Lorry remained ex-parte before the Tribunal.

5. The appellant/Insurance Company filed the counter affidavit before the Tribunal denying all the allegations made in the Claim Petition apart from disputing the negligence, liability and quantum.



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6. Before the Tribunal, PW1 to PW3 were examined and Ex.P1 to Ex.P28 were marked in support of the Claim. There was no oral or documentary evidence on the side of the respondents.

7. The Tribunal, on the basis of the disability certificate issued by the Medical Board, which was marked as Ex.P26, found that the functional disability of the Claimant was 100% and hence, adopted the multiplier method for computing the loss towards permanent disability.

8. Considering the permanent disability suffered by the Claimant and on the basis of the Salary Certificate, which was marked as Ex.P27, the Tribunal totally awarded a sum of Rs.52,04,500/- as compensation. Aggrieved by the award of the Claims Tribunal, the Insurance Company has filed the present appeal.

9. The learned counsel for the appellant/Insurance Company submitted that the impugned Award of the Tribunal is not sustainable and the award of the Tribunal under various heads, needs to be modified, as



the same were on the higher side. He further submitted that the award of the Tribunal under the head "Transport" and "Attendant Charges" were also on the higher side.

10. The learned counsel for the first respondent, on the other hand, submitted that, considering the nature of injuries sustained by the claimant, as also the effect of the injuries sustained by him on his earning capacity, the amount awarded by the Tribunal is just and fair and did not call for any interference. The learned Counsel further submitted that the Claimant was disabled for life due to the spine injury sustained by him in the accident. The learned Counsel submitted that the disability certificate issued by the Medical Board, assessing the disability at 90%, was just and fair and therefore, no interference was needed in the impugned award passed by the Tribunal.

11. Heard both sides and perused the materials placed on record.

12. There is no dispute about the fact that the Claimant suffered spinal injury. Three tests were conducted on 28.07.2016, 02.08.2016 and



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03.08.2016 to show that due to the injuries titanium plate and cage were fixed on his cervical spine from C4 to C6. It is also undisputed that due to the injuries, the claimant lost sensory functions below C5, i.e., below his neck and he had no control or sensation in his body. The claimant is said to be bed-ridden and uses wheel chair and is dependent on others for all his day-to-day activities like personal cleaning, transferring himself from bed to wheel chair and other activities. The claimant had weakness even in his upper limbs and he had no bladder control and was on continuous Foley's catheterisation. The claimant had no control over his bowel activities and had to wear diaper always. The Medical Board issued Ex.P6 Disability Certificate to the claimant assessing his disability at 90%. The Tribunal, assessed the functional disability at 100% and adopted the multiplier method for assessing the loss of income. Considering the nature of the injuries sustained by the claimant and also considering that he is confined to a wheel chair for the rest of his life, I am of the view that the Tribunal has arrived at a just compensation. The Tribunal has considered each and every aspect while awarding compensation under various heads in detail and the same is just and proper. Therefore, no interference is needed with the award of the Tribunal under the various heads. Hence, I



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am of the view that the appeal deserves to be dismissed. Accordingly, the appeal is dismissed. There shall be no order as to costs in this appeal.

13. The learned counsel for the appellant/Insurance Company submits that the entire award amount has already been deposited along with accrued interest and costs. In view of the same, the Claimant is permitted to withdraw the entire award amount by making appropriate application before the Tribunal. Consequently, connected Miscellaneous Petitions are closed.

21.04.2023

Index : Yes / No
Speaking Order : Yes/ No
Neutral Citation : Yes/No
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To

1. The Presiding Officer,
Motor Accident Claims Tribunal,
Tiruchengode.
2. The Section Officer, V.R. Section,
High Court of Madras, Chennai-600 104.



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N. MALA, J

MSM

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