



C.M.A.No.730 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.730 of 2012

and

M.P.No.1 of 2012

Divisional Manager,
The New India Assurance Company Ltd.,
No.106, Big Street,
Thiruvannamalai.

... Appellant

Vs.

1. Alamelu
2. Kalidass

...Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act,1988 against the common award and decree dated 02.11.2011 passed in M.A.C.T.O.P.No.400 of 2009, on the file of the Motor Accident Claims Tribunal, Thiruvannamalai / Principal Sub Judge, Thiruvannamalai.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.V.Sanjay
for M/s.P.Jagadeesan [R1]

JUDGMENT

The Civil Miscellaneous Appeal filed against the common award and decree dated 02.11.2011 passed in M.A.C.T.O.P.No.400 of 2009, on the file of



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the Motor Accident Claims Tribunal, Thiruvannamalai / Principal Sub Judge,
Thiruvannamalai.

2. It is the case of the appellant that the on 20.10.2008, at about 2 p.m., when the first respondent / one of the claimant was travelling in a two wheeler on Salem to Thirupathur main road, a car bearing Registration No.TN 47 D 6278 driven by its driver / second respondent in a rash and negligent manner and dashed against the two wheeler in which the claimants were riding, due to which the first respondent / one of the claimant of the claim petition sustained grievous injuries resulting in her hospitalization for the injuries sustained by her. Thereby, the claim petition in M.A.C.T.O.P.No.400 of 2009 has been filed by the first respondent / claimant. The Tribunal vide common award dated 02.11.2011 in M.A.C.T.O.P.Nos.400 and 430 of 2009 awarded a compensation to the tune of Rs.1,04,000/- in respect of M.A.C.T.O.P.No.400 of 2009 in favour of the first respondent herein and a sum of Rs.5,99,700/- in respect of M.A.C.T.O.P.No.430 of 2009 in favour of one Murugesan. Challenging the award passed in respect of M.A.C.T.O.P.No.400 of 2009, the present appeal has been filed by the Insurance company.



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3. The learned counsel appearing for the appellant / insurance company submits that the fixation of disability at 30% on the basis of the evidence of the Doctor is wholly erroneous and no materials have been placed to arrive at the said percentage. It is further the submission of the learned counsel for the appellant that the accident had happened only due to the negligence on the part of the claimants, therefore the insurance company is not liable to pay the compensation. It is further submitted that the compensation awarded under other heads are excessive and the same requires interference.

4. The learned counsel appearing for the first respondent / claimant submits that insofar as the liability, the Tribunal has considered the act of the offending vehicle as also the claimant in depth and has given a categorical finding that it is only due to the rash and negligent driving by the offending vehicle the accident had happened. Further the Doctor assessed disability of 30% based on the injuries sustained by the claimant which cannot be said to be erroneous and insofar as the other heads are concerned, the same is in consonance with the ratio laid down in the case of *National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme*



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Court Cases 680. Therefore, no interference is warranted for the same.

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5. Heard the learned counsel for the appellant and the learned counsel appearing for the first respondent and perused the materials placed on record.

6. A perusal of the order passed by the Tribunal reveals insofar as liability is concerned, Tribunal has made threadbare analysis, by examining the evidences both oral and documentary submitted by the parties has come to a conclusion that the accident had happened only due to the rash and negligent driving by the offending vehicle. When the Tribunal has not fixed the negligence on the part of the claimants, such being the case when the findings are supported by oral and documentary evidence, this Court is not inclined to accept the submission of the learned counsel for the first respondent that the accident was due to the rash and negligent driving by the claimants. The said contention with regard to the negligence and questioning the liability is rejected. Insofar as the disability of 30% is concerned, the Tribunal has examined the evidence of P.W.4 and assessed the disability at 30%, upon considering the disability certificate and injuries suffered by the claimant. Hence, this Court is of the opinion that the said percentage on disability cannot



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be said to be on the higher side. Considering the injuries sustained, as the injuries sustained by the claimant would definitely have a bearing on her livelihood, the Tribunal adopted percentage method and fixed the compensation at the rate of Rs.2,000/- per percentage of disability and awarded a sum of Rs.60,000/- which is just and reasonable and the same does not require interference. Similarly, insofar as the compensation awarded under other heads are concerned, the said compensation is in tune with the ration laid down in the case of *National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680*. Therefore, no interference is warranted for the same.

7. With the above observation, this appeal is dismissed confirming the award passed by the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

17.10.2023

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No



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M.DHANDAPANI,J

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To

1. Motor Accident Claims Tribunal, Thiruvannamalai / Principal Sub Judge,
Thiruvannamalai
2. The Section Officer, V.R. Section, High Court, Madras.

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