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C.M.A. No.2171 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2171 of 2018 and
C.M.P. No.16964 of 2018

The Divisional Manager
M/s.Cholamandalam MS General
Insurance Company Limited
'DARE HOUSE ANNEXE', II Floor,
No.2, N.S.C. Bose Road,
Chennai

... Appellant

Vs.

1.Dhanasekaran

2. Narashimman @ Arumugham

3. Samundiswari

4. Preethi

5. Praveen

... Respondents

(Respondents 3 to 5 were impleaded vide order dated 29.09.2023)
in CMP No.19359 of 2023)

Prayer: This Civil Miscellaneous Appeal is filed under Order 44 Rule 1 of Civil Procedure Code, to set aside the Judgment and decree dated 19.02.2018 made in M.C.O.P. No.728 of 2016 on the file of the Motor Accidents Claims Tribunal at Puducherry.



For Appellant : Mr.J.Michael Visuvasam

For Respondents : R1- Died

R2-No such Addressee

R3, R4 and R5 - No Appearance

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the Insurance Company to set aside the Judgment and decree dated 19.02.2018 made in M.C.O.P. No.728 of 2016 on the file of the Motor Accidents Claims Tribunal at Puducherry.

2. The 1st respondent is the claimant. During pendency of this appeal, 1st respondent/claimant died. The respondents 3 to 5 are the legal heirs of the 1st respondent/claimant.

3.The 2nd respondent is the owner and the appellant is the insurer of the offending vehicle namely TATA Ace bearing Regn. No.PY-01-AK-5106.

4. The case of the claimant is that on 28.06.2016 at about 12.00 hrs., at Lawspet main road, near Velmurugan Cement Shop,



Chellaperumalpet, Lawspet, Pondicherry, the petitioner was riding his motor cycle bearing Regn. No.PY-01-Q-6041 slowly by keeping extreme left from south to north direction. At that time, a TATA Ace bearing Regn. No.PY-01-AK-5106, belonging to the 1st respondent and driven by himself at a high speed in a rash and negligent manner without obeying the traffic rules and without making sound horn came behind and dashed against the claimant's motor cycle due to which, the claimant was thrown away from the motorcycle and sustained multiple injuries all over the body with fracture and immediately, he was admitted in G.H. Pondicherry.

5. The claimant filed a claim petition in M.C.O.P. No.728 of 2016 on the file of the Motor Accidents Claims Tribunal at Puducherry, claiming compensation of Rs.16,00,000/- against the owner and insurer of the offending vehicle namely stating that he was a LIC Chairman's club member and was earning Rs.10,00,000/- per annum and due to the accident, he sustained grievous injuries all over the body and fracture of spinal cord, fracture of right leg, fracture of acetabulum, fracture of head of femur, deep lacerated wound over face, facial injuries and eye also got affected.

6. In order to substantiate the claim, on the side of the claimant,



the claimant himself was examined as P.W.1 and 20 documents were marked as Ex.P1 to E.P20. On the side of the respondents, no oral or documentary evidence was let in. However, one Court document was marked as Ex.C1.

7. Before the Tribunal, the 1st respondent therein/owner of the offending vehicle remained ex-parte.

8. The Tribunal, after hearing both sides and considering the materials, awarded compensation of Rs.5,91,000/- and directed the respondents 1 and 2 therein who are the owner and insurer of the offending vehicle, to pay the said compensation jointly and severally with cost and interest at 7.5% per annum from the date of petition viz., 02.08.2016 till the date of payment excluding the period of dismissal for default if any.

9. Challenging the Award passed by the Tribunal, the Insurance Company has filed the present appeal.



10. The learned counsel for the appellant/ would submit that the the appellant/Insurance Company is not disputing the liability and also the coverage of insurance policy and the only dispute is with regard to the quantum of compensation. The learned counsel would submit that even after undergone treatment for replacement of the hip joint, there would not be 60% disability and the Tribunal failed to consider the same and without examining the Medical Officer, the Tribunal has fixed the disability at 60% as assessed by the Board, which warrants interference. Further, the compensation awarded under the head of pain and sufferings is also on the higher side and though a sum of Rs.1,00,000/- was awarded under the head of pain and suffering, again a sum of Rs.1,00,000/- has been awarded for loss of comfort and enjoyment of amenities. Therefore, the Award passed by the Tribunal is on the higher side and it is exorbitant which does not reflect the "just compensation" which warrants interference.

11. Pending appeal, the claimant/1st respondent died. Subsequently steps were taken and notice were served on the legal heirs of the claimant/1st respondent and names also printed. However, none appeared on behalf of the respondents 3 to 5.



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12. Heard the learned counsel for the appellant and perused the materials available on record.

13. The accident is not in dispute and the liability is also not disputed. However, there is a dispute with regard to the quantum alone.

14. It is seen that the disability certificate (Ex.C1) has been issued by the Medical Board and the Medical officer has assessed the disability at 60%. The appellant/Insurance Company has not filed any other document contra to the same of referred for second opinion and therefore, the Tribunal fixed the disability at 60% based on the disability certificate issued by the Medical Board. Therefore, there is no perversity in the fixation of disability at 60%. Further, considering the nature of injuries and the since the appellant/Insurance Company itself admitted that the claimant had undergone treatment for hip replacement, the Tribunal awarded Rs.1,00,000/- each towards pain and sufferings and towards loss of comfort and enjoyment of amenities and this Court finds that the same is reasonable while considering the nature of injuries sustained by the claimant. Now the claimant is no more.

15. This Court finds that there is no perversity in the appreciation



of evidence and the quantum of compensation Awarded by the Tribunal and the Award passed by the Tribunal is a "just compensation". Therefore, there is no merit in the appeal and the same is liable to be set aside.

16. Accordingly, this Civil Miscellaneous Appeal is dismissed.

There shall be no order as to the costs. Consequently, connected Miscellaneous Petition is closed.

29.09.2023
(2/2)

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Motor Accidents Claims Tribunal at Puducherry.

2.The Section Officer,
VR Section, High Court, Madras.



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C.M.A. No.2171 of 2018



P.VELMURUGAN. J.

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