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C.M.A.No.2215 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2215 of 2014

and

M.P.No.1 of 2014

The Manager,
IFFCO-TOKIO General Insurance Company Ltd,
No.28, Old No.195,
North Usman Road, T.Nagar,
Chennai – 17.

... Appellant

Vs.

1.Sekar

2.Arivazhagan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgement made in M.C.O.P.No.246 of 2010 dated 27.01.2014 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Pondicherry.

For Appellant : Mr.K.Saraswathi

For Respondents : Mr.R.Ganesan [R1]

Notice dispensed with [R2]



C.M.A.No.2215 of 2014

JUDGEMENT

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Challenging the award passed by the Motor Accidents Claims Tribunal (II Additional District Judge), Pondicherry in M.C.O.P.No.246 of 2010 dated 27.01.2014, the insurance company has preferred the present appeal.

2. As per the claim petition, on 16.02.2010 at about 13.00 hours, when the claimant was walking towards Gandhi Cement Works in Pondy – Cuddalore Road, a motorcycle bearing Regn.No.PY-AY-3505 belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and dashed against the claimant, as a result of which, the claimant sustained grievous injuries on his left eyebrow and head. Immediately, he was taken to Government Hospital, Pondicherry, there he was in the hospital as inpatient for three days. Therefore, he filed a claim petition before the Tribunal claiming a total compensation of a sum of Rs.10,00,000/-, for the injuries sustained by him in the said accident in M.C.O.P.No.246 of 2010.



C.M.A.No.2215 of 2014

WEB COPY

3. Before the Tribunal, the claimant examined four witnesses viz., P.W.1 to P.W.4 and marked 13 documents viz., Ex.P.1 to Ex.P.13. On the side of the second respondent/insurance company, they have examined one witness viz., R.W.1 and marked 2 documents viz., Ex.R.1 and Ex.R.2. After adjudication, the Tribunal by its award dated 27.01.2014 awarded compensation in a sum of Rs.9,44,000/-. Challenging the quantum of compensation arrived by the Tribunal, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, the doctor assessed the disability of 90% and doubting the disability assessed by the doctor, he requested this Court to refer the matter to the Medical Board to assess the disability, pursuant to which, the medical board assessed the disability at 86% permanent disability and filed a report before this Court. In view of the above, he prayed that this Court may pass appropriate orders.

5. Per contra, the learned counsel appearing for the first respondent/claimant submitted that, though the accident was happened in the year 2010, the Tribunal fixed the monthly income at Rs.4,500/- and



C.M.A.No.2215 of 2014

WEB COPY

holding that there was a functional disability and by applying the multiplier of 15, they awarded Rs.7,29,000/- towards loss of earning capacity, which is meagre. Further, he submitted that, though the Tribunal awarded compensation towards partial permanent disability to the tune of Rs.1,80,000/-, however, the Tribunal has not awarded future prospects. Hence, this Court may convert the compensation amount towards partial permanent disability into future prospects and confirm the award passed by the Tribunal. Accordingly, he prays for appropriate orders.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and also perused the materials available on record.

7. There is no quarrel with the fact that the accident had happened due to the rash and negligent driving of the driver of the motorcycle, for which a finding has been rendered by the Tribunal. The said finding is not assailed by the appellant/insurance company. Therefore, this Court confirms the finding with regard to rash and negligent driving of the driver of the motorcycle.



C.M.A.No.2215 of 2014

WEB COPY

8. Admittedly, the doctor has assessed the disability at 90% and doubting the same, the appellant/insurance company requested this Court to refer the first respondent to appear before the medical board, pursuant to order passed by this Court dated 21.11.2023, the first respondent appeared before the medical board and the medical board assessed the disability at 86%, which is permanent in nature. Further, though the monthly income fixed by the Tribunal at Rs.4,500/- for the accident happened in the year 2010 is meagre, however, instead of applying the appropriate multiplier at 14, the Tribunal has adopted the multiplier at 15. Though no future prospects has been awarded by the Tribunal, the Tribunal has awarded a sum of Rs.1,80,000/- towards partial permanent disability. Considering the above compensation awarded by the Tribunal, this Court is of the view that the Tribunal has awarded a just and reasonable compensation for the injuries sustained by the claimant, which does not warrant any interference. Therefore, this Court is not inclined to interfere with the same.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree passed by the Motor Accidents Claims Tribunal (II



C.M.A.No.2215 of 2014

Additional District Judge), Pondicherry in M.C.O.P.No.246 of 2010 dated 27.01.2014 is confirmed. The appellant/insurance company is directed to deposit the award amount as awarded by the Tribunal to the credit of M.C.O.P.No.246 of 2010 along with interest at the rate of 7.5% per annum from 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 four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

18.12.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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C.M.A.No.2215 of 2014

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- To
- 1.The Motor Accidents Claims Tribunal
(II Additional District Judge),
Pondicherry.
 - 2.The Section Officer,
V.R.Section,
High Court, Madras.



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C.M.A.No.2215 of 2014

M.DHANDAPANI, J.,

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C.M.A.No.2215 of 2014

18.12.2023