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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI, J.

CMA No.1745 of 2017
and CMP. No.9444 of 2017

United India Insurance Co. td.,
Cuddalore.

... Appellants

versus

1. A.Arjun
2. E.K.P.Palanivel

.... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 31.05.2005 passed in M.C.O.P. No.192 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Court (FTC-2), Cuddalore (OP.No.1634 of 2003 District court OP.No.1644 of 2003 sub Court Cuddalore).

For Appellants : Mr. M.J.Vijayaraghavan

For Respondents : R1 - NA
R2 - Exparte

JUDGMENT

This appeal has been filed against the judgment and award dated 31.05.2005 passed in M.C.O.P. No.192 of 2005 on the file of the Motor Accidents Claims Tribunal (Additional District Court (FTC-2),



Cuddalore.

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2. The case of the claimant is that on 10.02.2000 at about 7.30 p.m. When the claimant was walking left side of the road, the tractor bearing Reg. No.TN 31 U 4928 which was driver by its driver, owned by the second respondent and insured with the appellant herein, in a rash and negligent manner, hit against the claimant, due to which, he sustained grievous injuries and admitted in hospital for treatment. Thereafter, the claimant has filed claim petition before the Tribunal claiming compensation.

3. Before the Tribunal, during trial, in order to prove the case, the first respondent/claimant has examined two witnesses viz., PW1 and PW2 and marked Exs.P1 to P7, On the side of the appellant/insurance company, no witness was examined and no document was marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition and awarded a sum of Rs.2,74,000/- as compensation to the claimant under various heads, aggrieved by the said award, the appellant/insurance company has filed this appeal before this Court for negligence and quantum of compensation.



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4. The learned counsel for the appellant/insurance company would submit that the Tribunal erred in awarding compensation of Rs.2,74,000/- by adopting the multiplier theory for the alleged head injury sustained to the claimant. Further loss of earning power awarded by the Tribunal is very high. As per the disability certificate, there is no permanent disability for the claimant, it is only a partial permanent disability. The learned counsel would further submit that the quantum of compensation awarded by the Tribunal is excessive and there is no basis for awarding such compensation of Rs.2,74,000/- which warrants interference.

5. Heard the learned counsel for the appellant/insurance company and also perused the materials available on record. Though the name of the respondents have printed in the cause list, however, no one has appeared on their behalf. Considering the pendency of this case, this court is inclined to dispose the appear based on the available record.

6. The facts of the case are not in dispute. Admittedly, When the claimant was walking on the left side of the road, at that time, the second



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respondent's tractor, which was insured with the appellant, came in the same direction, hit against him, due to which, he sustained injuries.

Therefore, the Tribunal has rightly fixed the negligence on the part of the second respondent and fixed the entire liability as against the appellant.

7. In respect of quantum of compensation, this Court perused the award which reveals that the Doctor has assessed the disability at 35% but the Tribunal has fixed the disability at 30% and adopting multiplier method by fixing per percentage of disability and awarded compensation of Rs.2,34,000/-. The multiplier adopted is 30% and there is no issue with regard to the adoption of the said multiplier. However, the per percentage amount fixed is on the lower side and this Court is of the considered view that it could be enhanced to Rs.2,000/- per percentage of disability. Accordingly, this Court fixes the compensation towards loss of earning power as follows:

$$=Rs.2000/- \times 12 \times "13" \times 30\% = 93,600/-$$

8. The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings and the same has to be modified at Rs.20,000/- which the claimant is entitled to. Further, the claimant is entitled to get



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compensation under transportation, damages to clothing, extra nourishment and loss of income during treatment period. The Tribunal has awarded a sum of Rs.30,000/- towards permanent disability. Since the disability percentage has been utilized to calculate the loss of earning capacity, the appellant is not entitled for a separate compensation under the head of permanent disability. This Court is inclined to modify the award as follows:

Heads	Amount awarded by Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earning capacity	2,34,000/-	93,600/-
Pain and suffering	10,000/-	20,000/-
Permanent disability	30,000/-	
Transportation		3000
Extra nourishment		2000
Damage to clothing		1000
Loss of income during treatment period		4500
Total	2,74,000	1,24,100/-

9. In the result, the order of the Motor Accidents Claims Tribunal, Court of Small Causes, in MCOP. No.192 of 2005 dated 31.05.2005 is modified and this appeal is partly allowed.



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10. The appellant insurance company is directed to pay a compensation amount of Rs.1,24,100/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization, after deducting the amount if any already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the same on making proper application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

13.10.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
rli

To
1. The Motor Accidents Claims Tribunal,
(Additional District Court (FTC-2), Cuddalore.

2. The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.



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M.DHANDAPANI, J.

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CMA No.1745 of 2017

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