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C.M.A.No.1530 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.1530 of 2017
and CMP.No.8167 of 2017

The Branch Manager
Oriental Insurance Co.Ltd.,
No.23-B, Ground Floor,
Arunagiri Complex
Bye pass road, Hosur – 635 109.

... Appellant

Vs.

1. Velliappan
2. P. Anandan

... Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and Decree dated 30.04.2015 made in M.C.O.P.No.2490 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : M/s.Mukund R.Pandiyan for R1

: R2 Set Exparte in the lower Court itself



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed challenging the award and decree dated 30.04.2015 made in M.C.O.P.No.2490 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, challenging the quantum of compensation.

2. The facts of the case in a nutshell:

On 17.12.2011 at about 6:30 a.m. the first respondent / claimant was riding the TVS 50 bearing Reg.No.TN 29-R-4563 from his house to buy milk near Basavanna Koil. The first respondent/claimant was proceeding slowly, cautiously and on the left side of the road and adhering to the rules of the road at Chinthagampalli to Basavanna Koil road near Odhikuppam diversion road. At that time, the driver of the Tipper lorry bearing Reg.No.TN31-A-0097 belonging to the second respondent and insured with the appellant, drove the said lorry in a rash, reckless and negligent manner at an uncontrollable speed without sounding horn and without minding the rules of the road, came from back side i.e., from Chinthagampalli to Basavanna Koil road and dashed on the TVS 50 and caused the accident. Due to the impact,



the first respondent/claimant fell down from the TVS 50 and sustained grievous injuries. Immediately after the accident, the claimant/first respondent was taken to Government Hospital, Krishnagiri for first aid treatment and he was given treatment in the Intensive Care Unit of the said hospital. After that he took treatment from Government Hospital, Salem. The first respondent/claimant had spent a sum of Rs.80,000/- for his medical expenses and further he needed Rs.50,000/- for his future medical expenses. The first respondent/claimant was doing tree tapper work and coconut business and his monthly income was Rs.5,000/-. The Kandhikuppam Police have registered the case against the driver of the Tipper lorry under Sections 279, 338 of IPC in Crime No.397 of 2011. Hence the claimant/first respondent filed a claim petition claiming compensation for a sum of Rs.5,00,000/- under various heads.

3. Aggrieved by the award, the appellant/Insurance Company has come on an appeal to reduce the quantum of compensation awarded by the Tribunal. When the appeal was taken for admission total amount of compensation was deposited, out of which the claimant/first respondent was



permitted to withdraw a sum of Rs.2,00,000/-.

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4. The learned counsel for the appellant/Insurance Company submitted that the Tribunal erred in accepting 30% of the disability as assessed by P.W.2/Doctor and amount awarded by the Tribunal at the rate of Rs.4,000/- per percentage is excessive. He further submitted that a sum of Rs.75,000/- was awarded to the claimant/first respondent for fixing his artificial ear is on the higher side, since the accident was of the year 2011 and the artificial ear would not have cost more than Rs.50,000/-. The amounts awarded by the Tribunal under the heads pain & sufferings, attender charges, disability and nutrition & transportation are excessive and prayed for setting aside the award passed by the Tribunal.

5. The learned counsel for the first respondent submitted that according to the discharge certificate which is marked as Ex.P5, Doctor found that the first respondent/claimant had suffered fracture, loss of right ear and also undergone cosmetic surgery. Hence the expert assessed the disability of the claimant/first respondent as 30%. He further submitted that the



appellant/Insurance Company has not examined any Doctor to disprove the percentage of the disability issued by PW2. In view of the Ex.P2, Ex.P3 and Ex.P5, the disability of the claimant/first respondent was fixed as 30% and the award of compensation for a sum of Rs.3,15,000/- under various heads by the Tribunal is proper and reasonable and the appeal is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. In this case the appellant/Insurance Company has come on appeal only with regard to the quantum of compensation awarded by the Tribunal. The main contention of the appellant/Insurance Company is that the compensation awarded under the heads 1. Pain and sufferings 2. Nutrition and Transport 3. Attender charges and 4. Fixation of Artificial ear are exorbitant and on the higher side. In this case PW2/Doctor has physically examined the claimant/first respondent and found that there is a fracture, loss of right ear and cosmetic disfigurement. This Court is of the considered view that the compensation awarded under the above four heads as stated supra has to be interfered and modified by this Court. With regard to the artificial



ear the award of compensation of Rs.75,000/- that too in the year 2011 is definitely on the higher side and the Tribunal has erred in awarding the same and the same is reduced to Rs.50,000/-. With regard to the Pain and Sufferings, the Tribunal has awarded a sum of Rs.50,000/- which is also on the higher side and the same is reduced to a sum of Rs.25,000/-. The compensation awarded under the heads Nutrition & Transport and Attender charges for a sum of Rs.20,000/- and Rs.10,000/- are also not proper and the same has to be reduced to Rs.10,000/- and Rs.5,000/- respectively. Hence the compensation awarded by the Tribunal under the following heads are modified/reduced as follows:-

<i>Head</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation reduced by this Court (Rs.)</i>
Nutrition and Transport	20,000/-	10,000/-
Fixation of artificial ear	75,000/-	50,000/-
Attender charges	10,000/-	5,000/-
Pain and sufferings	50,000/-	25,000/-
Loss of amenities and discomfort	25,000/-	25,000/-
Permanent disability	1,20,000/-	1,20,000/-
Loss of income	15,000/-	15,000/-
Total	3,15,000/-	2,50,000/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and



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the compensation awarded by the Tribunal at Rs.3,15,000/- is hereby reduced to Rs.2,50,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.2490 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the balance amount lying in the credit of M.C.O.P.No.2490 of 2013, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Speaking Order : Yes/No



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J.SATHYA NARAYANA PRASAD, J.

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To

- 1.The Special District Judge,
Krishnagiri.
2. The Section Officer
VR Section.

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