



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1686 of 2017
and CMP. No.9050 of 2017

United India Insurance Co. Ltd.,
64, Armenian Street, Parrys,
Chennai-1.
Appellant

...

Vs.

1. Anandan
2. A.S.Pankajakshan

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the award and decree dated 01.07.2016 made in MCOP No.3181 of 2011 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Dhiraviyanathan
For Respondents : Ms.Subadra

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree dated 01.07.2016 made in MCOP No.3181 of 2011 on the file of the Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.



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2. It is the case of the claimant that on 12.05.2011, at about 19.00 hours when the first respondent was walking on the ECR road, at that time, a car driven by its driver bearing Reg. No.KL 02 J 2122 owned by the second respondent and insured with the appellant, in a rash and negligent manner and dashed against the first respondent, due to which, the first respondent sustained grievous injuries. Hence, the first respondent herein, has filed a Claim Petition before the Motor Accident Claims Tribunal, claiming Rs.6,00,000/- as compensation under various heads.

3. During the trial before the Tribunal, on the side of the claimant, the first respondent examined 2 witnesses and marked 9 documents viz., Exs.P1 to P9. On the side of the insurance company, no witness was examined and no document was marked.

4. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.5,08,600/- as compensation to the claimant payable by the appellant herein. Questioning the quantum of compensation, the appellant insurance company has filed this appeal before this Court.



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5. The learned counsel for the appellant insurance company submitted that the Tribunal has awarded the compensation in favour of the first respondent for the injuries, which is highly excessive and without any basis. The Tribunal, in the absence of any valid proof filed by the first respondent to prove his income, fixed the income for a sum of Rs.8000/- per month and awarded Rs.28,035/- towards loss of income and awarded Rs.3,60,000 towards loss of earnings, which is highly exorbitant. Further, the Tribunal erred in awarding huge amount in respect of pain and sufferings, extra nourishment, damages for mental and physical shock and loss of amenities, which needs to be interfered with.

6. The learned counsel for the first respondent submitted that due to the accident, the first respondent sustained grievous injuries and the Tribunal has rightly assessed the issue and awarded compensation in favour of the claimant, which does not warrant any interference.

7. Heard the learned counsel for the appellant as well as the first respondent and perused the materials available on record.



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8. The appellant is the insurance company and the first respondent is the claimant. The appellant insurance company has filed the present appeal questioning the quantum of compensation.

9. On a perusal of the medical report, it is found that the Doctor, who has not treated the injured, assessed the disability at 75% and the Tribunal, without considering the statement of PW2, awarded huge amount in respect of loss of earning and applied multiplier method. In the present case, the first respondent was working as mason and he is aged about 37 years at the time of the accident and hence, loss of earning has to be calculated percentage method. This Court fixes the disability for the first respondent at 40% and awarded Rs.4000/- per percentage. Further, the Tribunal awarded Rs.20,000/- towards loss of amenities. There is no provision for awarding compensation for loss of amenities. Regarding the other heads awarded by the Tribunal are reasonable and there is no need to interfere with it.

10. The award amount of compensation is modified under the following heads :-



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Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of income	28,035	28,035
2	Attendar charges	3,240	3,240
3	Transportation	10,000	10,000
4	Extra Nourishment	20,000	20,000
5	Damage to clothing	1,000	1,000
6	Medical Bills	16,263	16,263
7	Pain and sufferings	40,000	40,000
8	Damages for mental and physical shock	10,000	10,000
9	Loss of amenities	20,000	
10	Loss of earning	3,60,000	1,60,000 (40% X Rs.4000)
	Total	5,08,538/- rounded of to 5,08,600/-	2,88,538/- rounded of to 2,88,600/-

11. With the above modification, the order of Tribunal in MACTOP No.3181 of 2011 is modified and this appeal is partly allowed.

12. The Compensation amount of Rs.5,08,600/- is modified to **Rs.2,88,600/-** with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The appellant -Insurance Company is directed to deposit the entire award amount as ordered by this Court



with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment.

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.

10.10.2023

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Index : yes/no

Internet : yes/no

Speaking Order/Non-Speaking Order

To

The Motor Accidents Claims Tribunal,
III Judge, Small Causes Court, Chennai.



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M.DHANDAPANI.J.,

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