



C.M.A.No.3078 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 07.12.2022	Pronounced on 03.01.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3078 of 2017

and

C.M.P.No.18637 of 2017

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Suguna Buildings, 1st Floor,
707, Avinasi Road, Coimbatore.

... Appellant

Vs.

1.Kumar, S/o.Mani,
1/51, Balasubramaniam Compound,
Mannarai Parapalayam, Tiruppur.

2.Fiber International Set,
No.44, Teche, T.Nagar,
Mudalipalayam,
Tiruppur.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in MCOP.No.1154 of 2009, dated 09.10.2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tiruppur.



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For Appellant : Mr.V.Murali
for Mr.J.Chandran

For Respondents : Mr.Ma.Pa.Thangavel (for R1)

R2-Dispensed with

J U D G M E N T

The Appeal has been filed against the Judgment and Decree made in MCOP.No.1154 of 2009, dated 09.10.2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tiruppur.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.1154 of 2009, dated 09.10.2012 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Tiruppur. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Insurance Company filed the above Appeal on the point of negligence and quantum.



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4. During the trial, on the side of the claim Petitioner, PW1 to PW3 were examined, Ex.P1 to Ex.P.6 were marked and on the side of the Respondents, none was examined and no documents were marked.

5. Heard the learned counsel for the Insurance Company/Appellant and learned counsel for the 1st Respondent.

6. The claim Petitioner/1st Respondent herein viz., Kumar filed MCOP.No.1154 of 2009 seeking compensation for the injuries sustained by him in a road traffic accident on 13.08.2009. The factum of the accident, manner of the accident are in dispute. The Tribunal has held that due to the rash and negligent driving of the driver of the first Respondent viz., second Respondent herein, the accident had occurred and in the absence of any contra evidence let in before the Tribunal by the driver of the offending vehicle, the Tribunal has held that the Accident has happened only due to the rash and negligent driving of the driver of the offending vehicle and fixed the liability both on the owner of the vehicle and the Appellant/Insurer of the vehicle. After perusing PW1 and Ex.P.1, I find that the finding of the trial Court does not



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warrant any interference and it does not suffer from any illegality or irregularity. PW1, being injured is the best person to speak about manner of the accident and hence the said finding of the Tribunal is hereby confirmed.

7.On the point of quantum of compensation, considering the evidence of PW3/Dr.Senthil Kumar coupled with documentary evidences Ex.P.2/Wound Certificate, Ex.P.3/Discharge summary (Revathy Hospital), Ex.P.4/Discharge summary (MCH, Coimbatore) and Ex.P.5/Disability Certificate, the Tribunal has assessed the disability suffered by the claim Petitioner as 40%. As spoken to by PW3/Dr.Senthil Kumar, he had issued Ex.P.5/disability certificate and assessed 49% as functional disability. The claim Petitioner was doing Packing job in Babuji Garments, Karumarampalayam, and after the accident his right leg has totally lost its strength and hence the Tribunal has rightly concluded the loss of earning capacity and fixed the functional disability at 40% by applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar and another*** reported in ***2011 (1) SCC 343***.

8.PW2/Co-worker of the deceased has spoken about the income of the



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deceased as Rs.8,000/- per month, however, the Tribunal has rightly taken the income of the deceased as Rs.4,000/- per month and assessed the annual income at Rs.48,000/- and assessed the pecuniary loss sustained by the claim Petitioner by adopting multiplier “18”, at Rs.8,64,000/- [Rs.48000 x 18] and after calculating 40% disability, arrived at Rs.3,45,600/- as pecuniary loss. The Tribunal also added a sum of Rs.30,000/- towards pain and sufferings, a sum of Rs.25,000/- towards loss of amenities, a sum of Rs.2,000/- towards extra nourishment, a sum of Rs.2,000/- towards transportation and a sum of Rs.980/- towards medical expenses. In total, the Tribunal fixed compensation at Rs.4,05,580/-. Hence I find that based upon the documentary evidence, the compensation has been properly arrived and I do not find the adoption of multiplier method is erroneous.

9.Hence, I find that both findings rendered by the Tribunal on the point of rash and negligent driving on the part of the offending vehicle and quantum of compensation by applying multiplier method is just and proper. Therefore, there is no merit in this Appeal and the award passed by the Tribunal does not warrant any interference of this Court.



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10. Accordingly, the Appeal is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

03.01.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
The Motor Accident Claims Tribunal,
I Additional District and Sessions Court,
Tiruppur.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

C.M.A.No.3078 of 2017

and

C.M.P.No.18637 of 2017

Dated: 03.01.2023