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C.M.A.Nos.979 & 1289



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

**C.M.A.Nos.979 & 1289 of 2023
and C.M.P.No.9024 of 2023**

C.M.A.No.979 of 2023

The Oriental Insurance Co. Ltd.
No.115/216, Prakasam salai
Chennai-600 108.

... Appellant

Vs.

1.K.Saravanan

2.ABT Industries Limited
Sakthi Finance building
Dr.Nanjappa road, Coimbatore.

... Respondents

C.M.A.No.1289 of 2023

K.Saravanan

... Appellant

Vs.

1.ABT Industries Limited
Sakthi Finance building
Dr.Nanjappa road, Coimbatore.

2.The Oriental Insurance Co. Ltd.
No.115/216, Prakasam salai
Chennai-600 108.

... Respondents

Common Prayer: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 23.06.2022



C.M.A.Nos.979 & 1289

made in M.C.O.P.No.2233 of 2018 on the file of the Motor Accidents Claims Tribunal, Small Causes Court No.IV, Chennai.

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In C.M.A.No.979 of 2023

For Appellant : Mr.S.Senthilkumar

For R1 : Mr.K.Varadha Kamaraj

In C.M.A.No.1289 of 2023

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.S.Senthilkumar

COMMON JUDGMENT

C.M.A.No.979 of 2023 is filed by the Insurance Company challenging the quantum of compensation awarded by the Claims Tribunal and C.M.A.No.1289 of 2023 is filed by the claimant for enhancement of compensation.

2. As both the appeals arise out of one and the same award, the appeals are taken up together and disposed of by this common judgment. For the sake of convenience, the parties are referred to as per their respective ranks in the claim petition.

3. On 25.08.2018 at about 9.15 hours, while the claimant was riding his motor cycle along with a pillion rider from south to north, near Madhuravoyal Bypass service road, the driver of the TATA Ace van belonging to the 1st respondent, drove



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the same in a rash and negligent manner and dashed against the claimant's motor cycle, causing him grievous injuries. According to the claimant, he was admitted in the Government Kilpauk Medical College Hospital, Chennai, as an in-patient for 37 days and took treatment for the injuries sustained by him in the accident. He was aged 28 years at the time of accident and as a carpenter, was earning Rs.750/- per day. The claimant therefore, filed the Claim Petition claiming Rs.10,00,000/- as compensation for the injuries suffered by him in the accident.

4. The 1st respondent, owner of the van remained exparte before the Claims Tribunal. The 2nd respondent/Insurance Company contested the Claim Petition by filing a detailed counter denying all the averments made in the Claim Petition apart from denying the negligence, liability and quantum of compensation.

5. Before the Claims Tribunal, in support of his claim, the claimant examined himself as P.W.2 and Exs.P6 to P9 were marked. The disability certificate issued by the Medical Board, was marked as Ex.C1. On the side of the respondents, no oral or documentary evidence was adduced.

6. The Claims Tribunal, on an assessment of the entire evidence on record, returned a finding of negligence against the driver of the van belonging to the 1st respondent, assessed the compensation at Rs.4,35,500/- along with 7.5% interest and mulcted the liability on the 2nd respondent/Insurance Company.



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7. Aggrieved by the quantum of compensation awarded by the Tribunal, both the claimant as well as the 2nd respondent/Insurance Company have filed the present appeals.

8. Learned counsel appearing for the claimant submitted that the Medical Board assessed the permanent disability at 39%. According to the counsel, the Tribunal considering the nature of injuries and assessment of permanent disability by the Medical Board at 39%, ought to have adopted the multiplier method. Learned counsel further submitted that he did not have any serious objection on the award of the Tribunal towards other heads.

9. Learned counsel for the 2nd respondent/Insurance Company on the other hand submitted that the Tribunal was justified in adopting unit method as the claimant had not proved that there was functional disability. Learned counsel further submitted that the Tribunal erred in mis-calculating the compensation towards permanent disability assessed at 39%. For 39% disability at Rs.5,000/- per percentage of disability, the compensation would be Rs.1,95,000/- and not Rs.2,85,000/- as awarded by the Tribunal. On the other heads, the learned counsel fairly submitted that he too had no serious objection.

10. I have heard the learned counsel for the claimant and the learned counsel for the 2nd respondent and perused the materials placed on record.



11. The only point to be considered in these appeals is whether the quantum of compensation awarded by the Tribunal is fair, just and reasonable?

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The claimant was aged 28 years at the time of accident and was working as a carpenter. The claimant suffered fracture of the right foot and therefore, in my view the Tribunal erred in thinking that there was no functional disability. It cannot be said that the injury to the right foot would not have any impact on the earning capacity of the claimant, who was a carpenter by profession. Therefore, I am of the view that the functional disability of the claimant can be fixed at 10%. The Tribunal assessed the notional income of the claimant at Rs.10,000/- per month. By adding 40% towards future prospects and applying multiplier '17', the compensation towards permanent disability is assessed at Rs.2,85,600/- (Rs.10,000/- X 4000 [Rs.10,000/- X 40%] X 12 X 17 X 10%) and the same is rounded off to Rs.2,85,000/-. Therefore even adopting the multiplier method, the award towards permanent disability remains the same. As conceded by both the learned counsels, the award of the Tribunal under other heads is confirmed.

12. In the light of the above said discussions, the award of the Tribunal is confirmed. The claimant is therefore, entitled to Rs.4,35,500/- along with 7.5% interest per annum from the date of petition till the date of deposit.



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13. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that 50% of the amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submission, there shall be a direction to the 2nd respondent/Insurance Company to deposit the balance amount along with 7.5% interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant shall be entitled to withdraw the same, by making proper application before the Claims Tribunal.

14. Both the Civil Miscellaneous Appeals are accordingly dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

1.IV Judge, Small Causes Court, Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

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N.MALA.J.,

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