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C.M.A.No.2464 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2464 of 2019

And

C.M.P.No.11343 of 2019

The Branch Manager
New India Assurance Company Limited,
Branch Office, No.80,
Arcot Road, Porur,
Chennai – 600 116.

... Appellant

Vs.

1.R.Srinivasan
2.P.Chandrappa

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 24.11.2011 made in M.C.O.P.No.579 of 2009, on the file of Motor Accidents Claims Tribunal (Additional Subordinate Judge) Additional Special Judge, Krishnagiri.

For Appellant : Mr.K.Vinod
For Respondents : R1 – No Appearance
Dr.G.Babu for R2

J U D G M E N T

The second respondent Insurance Company before the Motor



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Accidents Claims Tribunal, is the appellant herein. This appeal has been filed against the judgment and decree dated 24.11.2011 made in M.C.O.P.No.579 of 2009, on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) Additional Special Judge, Krishnagiri.

2.The brief facts of the case is that on 17.03.2007 at about 4.30p.m., the first respondent was travelling in a TATA Ace bearing Registration No.TN.24/X.3317 from Bennekal to Bangalore Santhapuram Market as a coolie after loading the vegetables. When the vehicle was proceeding near Balakaranahalli gate in Athipalli, the driver of the vehicle drove the vehicle in a rash and negligent manner, due to which the rear wheel got punctured and the vehicle lost its control and capsized, due to which, the first respondent sustained injuries.

3.Thereafter, the injured claimant/ first respondent filed claim petition before the Motor Accidents Claims Tribunal claiming compensation of Rs.8 Lakhs. After adjudication, the Tribunal, awarded a sum of Rs.6,91,000/- with interest at the rate of 9% from the date of petition till the date of realization and proportionate costs and directed



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the appellant Insurance Company to pay the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the first respondent travelled as a gratuitous passenger in the vehicle owned by the second respondent and hence, the first respondent is not entitled to claim compensation as against the Insurance Company. Further, the first respondent suffered only injuries for which, the Doctor assessed the disability as 65%, however, the Tribunal awarded compensation by adopting multiplier method, which is not sustainable.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent. Though notice has been sent, there is no representation for the first respondent. Considering the pendency of the civil miscellaneous appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

6.The owner of the vehicle did not dispute the fact that the claimant was employed as a coolie. Admittedly, due to the rash and negligent driving of the driver of the vehicle owned by the second



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respondent, the accident happened and the first respondent sustained injuries. In order to substantiate the disability, the claimant examined himself as P.W.1 and he also examined the Doctor as P.W.2 and P.W.2 in his deposition before the Tribunal has deposed that the right leg neck portion of the femur had not united at all and the left leg suffers from PTS. Therefore there is damage to both the legs of the first respondent and hence, the first respondent could not carry out his avocation as a loadman, he cannot bear weight. Hence, the injuries sustained by the first respondent affects his avocation. Thereby, the Tribunal awarded compensation by adopting multiplier method, which warrants no interference.

7. Further the amount awarded under the other heads are also just and reasonable, however, the Tribunal has awarded 9% interest, which in the opinion of this Court is high and hence, the interest is reduced to 7.5% from 9%. The appellant Insurance Company shall deposit the compensation amount with interest at the rate of 7.5% from the date of petition till the date of realization.

8. The civil miscellaneous appeal is dismissed. The decree and judgment dated 24.11.2011 made in M.C.O.P.No.579 of 2009 by the



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Motor Accidents Claims Tribunal (Additional Subordinate Judge)

Additional Special Judge, Krishnagiri, is modified only in respect of the interest awarded.

9.The appellant/ Insurance Company is directed to deposit the award amount with interest at the rate of 7.5% from the date of petition till the date of realization before the Motor Accidents Claims Tribunal (Additional Subordinate Judge) Additional Special Judge, Krishnagiri, within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimant/ first respondent is permitted to withdraw the award amount, along with accrued interest and proportionate costs, on making proper and necessary application before the Tribunal. The appellant Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

10.The civil miscellaneous appeal is dismissed with above terms. No costs. Consequently, the connected miscellaneous petition is closed.

16.11.2023

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

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M.DHANDAPANI,J.
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To

1.The Motor Accidents Claims Tribunal
(Additional Subordinate Judge) Additional Special Judge,
Krishnagiri.

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