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C.M.A.No.2969 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2969 of 2022
and C.M.P.No.22982 of 2022

United India Insurance Co.Ltd
Divisional Office No.I, 2nd Floor
104-A, Peramanur Main Road
Salem - 7

.. Appellant

Versus

1.Shanmugam
2.Venkateswaran

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 05.05.2017 passed in M.C.O.P.No.657/2010 on the file of Motor Accident Claims Tribunal cum II Additional District Juge, Salem.

For Appellant : Mrs.I.Malar
For Respondents : Mr.S.P.Yuvaraj

JUDGMENT

The Insurance Company is the appellant herein challenging the award passed by the Motor Accident Claims Tribunal cum II Additional District Juge, Salem in M.C.O.P.No.657/2010 on the ground of quantum.



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2. The factum of the accident, manner of the accident and rash and negligence on the part of the driver of the offending vehicle are not in dispute. Accordingly, the same is hereby confirmed.

3. On the point of quantum of compensation, learned counsel for the appellant, Mrs.I.Malar would contend that disability fixed by the Tribunal is on the higher side, besides, she drew my attention to the paragraph 15 of the judgment that the Permanent disability is taken as 100%.

4. After perusing Ex.P7-Wound Certificate and P8-Discharge summary of Manipaul Certificate, P10-Discharge summary, P13-M.R.I.Scan, C.T.Scan & X-Ray, P20-M.R.I Report, P21-M.R.I.Scan and X-Ray, P22-Photographs in regard to Neuro and P24-Disability Certificate 40%, I find that the Tribunal has come to the conclusion that the petitioner has sustained injuries on right hand and right upper leg and underwent surgeon in ORIF RIGHT DISTAL RADIUS & SKIN GRAFTING OVER RAW AREA RIGHT UPPER LEG and thereafter underwent surgery for the complaint of C5C6 Brachial Palsy. The Tribunal has also taken note of the medical evidence of PW2/Doctor that the claim petitioner



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suffering with flailness of right upper limb, failure of movement of right shoulder elbow wrists and forearm and stiffness of right knee and his upper muscles did loose their strength and there is a deformity right upper limb and the petitioner is unable to do any work as before. The PW3/Doctor who had issued P24 would come to the conclusion that he cannot do work after the accident and the petitioner has lost his energy and strength in his right hand shoulder of the petitioner is not in a position to do any work or run his power loom business due to disability and accordingly, permanent disability of 100%.

5. In view of the medical evidence in Ex.P7,8,10,28,24, the learned Tribunal has rightly come to the conclusion the disability suffered is 100% and granted the compensation. The notional income is also reasonably determined and hence, the quantum of compensation awarded by the Tribunal is fair and reasonable.

6. Accordingly, I find no merits in this Civil Miscellaneous Appeal and the same is liable to be dismissed with the following conditions:



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(i) the Appellant insurance company is directed to deposit the award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(ii) On such deposit being made, the claimant/respondent 1 is permitted to withdraw the share in the award amount with proportionate accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
dhk

To

The Presiding Officer,
Motor Accident Claims Tribunal
cum II Additional District Judge
Salem.



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RMT.TEEKAA RAMAN.J,

dhk

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