



C.M.A.(MD)No.276 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2023

Pronounced on : 01.08.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.276 of 2019

The Branch Manager,
The Oriental Insurance Company Ltd.,
Bye-pass Road,
Arasaradi, Madurai.

... Appellant/
2nd Respondent

Vs.

1. K.Natarajan

... 1st Respondent/
Petitioner

2. G.Mohanraj

... 2nd Respondent/
1st Respondent

(Respondent No.2 given up)

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of MACT cum Chief Judicial Magistrate, Karur made in M.C.O.P.No.134 of 2017 dated 04.08.2018 and allow the appeal with costs.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.N.Sudhagar Nagaraj

For R2 : Given up



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.134 of 2017 dated 04.08.2018 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur.

2. The appellant/insurer, who was directed to pay compensation of Rs.6,18,000/- (Rupees Six Lakhs and Eighteen Thousand only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 27.08.2017, challenged the quantum of compensation awarded at, by the Tribunal.

3. It is pertinent to note that the appellant/insurer has not disputed the liability mulcted on it.

4. The only point that arises for consideration is as to whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?



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5. It is the case of the first respondent/claimant that after the accident, he was given first aid treatment at Government Hospital, Karur and thereafter, he was admitted as inpatient in Ganga Medical Centre and Hospital Private Limited, Coimbatore, from 27.08.2017 to 05.09.2017, that he has suffered bone injuries and also suffered head injury and that he has sustained partial and permanent disability.

6. Accordingly to the first respondent/claimant, he has sustained the following injuries (1) closed fracture lateral tibial condyle, (2) comminuted segmental fracture shaft of tibia, (3) fracture shaft of fibula right leg and (4) head injury scalp laceration with coarsely sutured laceration.

7. It is evident from Ex.P.2-wound certificate that the medical officer, who had treated the first respondent/claimant has given his opinion that two injuries suffered are grievous in nature. It is further evident from Ex.P.7-Discharge summary issued by Ganga Medical Centre and Hospital Private Limited that closed reduction and internal fixation right tibia with nailing (AO Expert) cancellous screw fixation right tibial condyle was done on 01.09.2017 and that the first respondent/claimant was admitted on 27.08.2017 and discharged on 05.09.2017.



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8. The learned counsel appearing for the appellant/insurer would mainly contend that the Tribunal has erroneously applied multiplier method for calculating the disability compensation in an injury case, that the Tribunal has erroneously applied multiplier 9 and that the amounts awarded under various heads are all excessive.

9. The Tribunal, by taking note the identity card issued to the first respondent/claimant under Ex.P.13, has rightly held that the first respondent/claimant was working as a mason at the relevant point of time.

10. P.W.2-medical officer in his evidence would say that the first respondent/claimant has suffered head injury and three bone injuries on his right knee, right tibia and right humerus bone and that he has fixed the disability at 45%. In cross-examination, he would say that he has not given any treatment to the first respondent/claimant and that bone got malunited and he has fixed the disability for head injury at 10%. The learned trial Judge, considering the nature of the head injury and also taking note of the fact that there was no internal injury and there was no surgery, has come to a decision that the disability fixed at 10% for head injury cannot be



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accepted. But taking note the nature of the injuries and consequent malunion, the Tribunal has fixed the disability at 35%. Considering the number and nature of bone injuries and also taking note of the malunion of the bone joints and also the fact that the first respondent/claimant was working as a mason at that time, the Tribunal has rightly adopted multiplier method and as such, the same cannot be found fault with.

11. Though the first respondent/claimant has alleged that he was earning Rs.15,000/- per month, the Tribunal has fixed the monthly income at Rs.10,000/-. The learned counsel appearing for the appellant/ insurer would submit that the first respondent/claimant has not produced any iota of evidence to prove his income, but the Tribunal, without considering the above, has fixed the monthly income at Rs.10,000/-, which is very much excessive. As rightly pointed out by the learned counsel appearing for the first respondent/claimant, the Tribunal has not added any income towards future prospects. Considering the nature of the job and the age of the first respondent/claimant and also taking note of the fact that no amount was added towards future prospects, the monthly income fixed at Rs.10,000/- cannot said to be excessive.



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12. Applying the legal dictum laid down in ***Smt. Sarla Varma and others Vs. Delhi Transport Corporation and another*** reported in ***AIR 2009 SC 3104***, the Tribunal has rightly adopted multiplier 9 and arrived at Rs.3,78,000/- as loss of income. The Tribunal, considering the medical bills produced under Ex.P.8 to Ex.P.11, has awarded Rs.1,33,400/- for medical expenses and Rs.31,600/- for transport charges. Considering the nature of the injuries and consequent disability and the period of treatment, the Tribunal has rightly awarded Rs.25,000/- for pain and suffering, Rs.10,000/- for attendant charges, Rs.10,000/- for extra nourishment and Rs.30,000/- for removal of rod and screw as future medical expenses, all totalling Rs.6,18,000/-. Considering the above, the amounts awarded under the various heads above referred are very much reasonable and the same cannot be said to be excessive. Hence, this Court is not inclined to interfere with the award passed by the Tribunal. Consequently, this Court concludes that the appeal is devoid of merits and the same is liable to be dismissed.

13. In the result, this Civil Miscellaneous Appeal is dismissed and the award dated 04.08.2018 passed in M.C.O.P.No.134 of 2017 on the file



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of Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur is confirmed. The appellant/insurer is directed to deposit the entire award amount with accrued interests and costs, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited and on such deposit being made, the first respondent/claimant is permitted to withdraw the said amount, with accrued interests. No costs.

01.08.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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K.MURALI SHANKAR,J.

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To:

1. The Motor Accident Claims Tribunal/Chief Judicial Magistrate,
Karur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in
C.M.A.(MD)No.276 of 2019

Dated : 01.08.2023