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CMA.No.2745 of 2023
and C.M.P.No.25265 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2745 of 2023
and C.M.P.No.25265 of 2023

M/s.Bajaj Allianz
Insurance Company Limited
'Issanna Kattima Bfuilding',
Nos.497 & 498,
Poonamallee High Road,
Arumbakkam, Chennai - 600 106.

... Appellant

Vs

1. M.Saravanan
2. M/s.Ramalingam Construction Private Limited,
Having Office at
No.252, Gandhiji Road,
Chandran Studio Building,
Erode -638 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award, dated 05.12.2022 in M.C.O.P.117/2019 on the file of the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : No appearance



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JUDGMENT

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Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal, Tiruvallur in M.C.O.P.117/2019, the present appeal is filed by the appellant, the Bajaj Allianz Insurance Company Limited.

2. The 1st respondent, claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules in M.C.O.P.117/2019 before the Motor Accident Claims Tribunal, II Additional District and Sessions Court, Tiruvallur at Poonamallee, seeking compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that occurred on 02.11.2015.

3. The brief case of the appellants / claimants is as follows :

On 02.11.2015, the claimant was riding a two-wheeler bearing Registration number TN-12-B-4565 on Puzhal - Tambaram Bye-pass road. When he was nearing Retteri, a speeding TATA Load van bearing Registration number TN-33-AS-9622, hit the two wheeler, as a result of which, the claimant sustained injuries all over his body.



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4. According to the claimants, the rash and negligent driving of the driver of the TATA Load Van bearing Registration number TN-33-AS-9622 was the cause of the accident and that since the said vehicle was insured with the appellant, the Bajaj Allianz Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

5. In the Tribunal, the owner of the vehicle remained absent and was set *exparte*. The appellant, Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

6. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the TATA Load Van bearing Registration number TN-33-AS-9622 and directed the appellant, the Bajaj Allianz Insurance company Limited to pay compensation of Rs.1,35,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide, its orders dated 05.12.2022.



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7. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant, Insurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act.

8. Heard Mr.J.Michael Visuvasam, learned counsel for the appellant.

9. Though notice was served on the respondents and their names are printed in the cause list, there is no representation on their behalf.

10. Mr.J.Michael Visuvasam, learned counsel appearing for the appellant contended that the claimant immediately after accident, took treatment at Sri Ramachandra Hospital, Porur. A copy of the Accident Register (Ex.R3) issued by Sri Ramachandra Hospital, Porur also shows that the claimant sustained 'tenderness over his left elbow joint'. However, the Medical Board attached to the Government Hospital, Tiruvallur has assessed his disability as 30% mentioning the injuries as 'distal femer fracture' and 'proximal tibia fracture'. According to him, the injuries



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mentioned in the disability certificate did not match with the injuries mentioned in the Accident Register. In the circumstances, the Tribunal was wrong in awarding compensation of Rs.1,35,000/- to the claimant.

11. A perusal of the Accident Register shows that the claimant sustained the following injuries:

- i. Tenderness over elbow joint swelling*
- ii. No Bone Injury*

12. As rightly pointed out by Mr.J.Michael Visuvasam, learned counsel for the appellant, in the Disability Certificate, the injuries sustained by the claimant has been indicated as under:

- Distal Femer fracture*
- Proximal Tibia fracture - plating done*
- ROM painful*
- Post traumatic arthritics (+)*



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13. Moreover, in the disability certificate, his father's name of the claimant is mentioned as Lakshmanan and his age as 22 years. In the claim petition, claimant has stated that his age is 27 years and his father's name is Mani. The Tribunal without verifying these aspects, has taken the disability as 30% for awarding compensation under the head partial permanent disability. As already observed, the claimant did not sustain any fracture as per the Accident Register issued by the Sri Ramachandra Hospital, Porur and he has not also been subsequently got admitted in any hospital. In the circumstances, injury sustained by the claimant is considered as simple in nature. Therefore, a consolidated sum of Rs.50,000/- (Rupees Fifty Thousand only) is awarded to the claimant.

14. Thus, the compensation awarded by the Tribunal is scaled down to Rs.50,000/- from Rs.1,35,500/- which would carry interest at the rate of 7.5% per annum.



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15. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. The compensation awarded by the Tribunal is scaled down to consolidated amount of Rs.50,000/-.
- iii. The appellant, Bajaj Allianz Insurance Company Limited, is directed to deposit the consolidated amount of Rs.50,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.117/2019 on the file of the Motor Accident Claims Tribunal, Tiruvallur.
- iv. On such deposit being made, the Respondent / claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law.

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Index : Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes / No
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R. HEMALATHA, J.

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To

1. The Motor Accident Claims Tribunal,
Tiruvallur at Poonamallee.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

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