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(2015) 03 MAD CK 0358

In the Madras High Court

Case No : CMA(MD) Nos. 1319 of 2013 and 110 of 2014 and M.P.(MD) Nos. 1 and 2 of 2013 and 1 of 2015

The Branch Manager, The Bajaj Allianz General Insurance Co. Ltd. APPELLANT

Vs

Muthukrishnan and Others RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Citation : (2015) 03 MAD CK 0358

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : G. Maruthiah, for the Appellant

Judgement

D. Hari Paranthaman, J.—Challenging the award passed in MCOP. No. 697 of 2010 dated 21.02.2013 by Motor Accident Claims Tribunal, (Principal Sub Court), Tirunelveli, the insurance company filed CMA(MD) No. 1319 of 2013. Seeking enhancement of compensation, the claimant filed CMA(MD) No. 110 of 2014.

2. That on 15.07.2008, the claimant was travelling in a Tempo Van bearing registration No. TN-67-A-0474 owned by one Selvakumar who is the 2nd respondent in CMA(MD) No. 1319 of 2013 insured with the appellant insurance company. While the Van was proceeding on Tirunelveli-Nagercoil main road, the driver of the Tempo Van drove the same in a rash and negligent manner and hit against a bus bearing registration No. TN-74-N-1946 owned by the 3rd respondent transport corporation. There was head-on collision of both the vehicles, in which, the claimant sustained grievous injuries, which resulted in amputation of right hand of the claimant. He made a claim in MCOP. No. 697 of 2010 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Tirunelveli, claiming compensation of Rs. 10,00,000/-. The appellant insurance company resisted the claim.

3. Before the Tribunal, the claimant examined himself as P.W. 1 and he examined the Doctor to prove the disability and marked Exs. P1 to P12. The appellant

insurance company examined its official as a witness and marked Exs. R1 and R2. The 3rd respondent transport corporation examined its official as a witness and no document was marked on their behalf.

4. The Tribunal upon consideration of oral and documentary evidence, fixed the negligence in the ratio of 50:50 on the drivers of the Tempo Van and the transport corporation bus and awarded compensation of Rs. 7,26,854/- with interest @9% per annum under the following heads:--

5. Since the Tempo Van carried more passengers than the authorised limit in violation of policy conditions, the Tribunal directed the appellant insurance company to pay compensation and recover the same from the owner of the Tempo Van/2nd respondent herein.

6. The learned counsel for the appellant in CMA(MD) No. 1319 of 2013 has contended that the Tribunal erred in fastening 50% liability on the appellant insurance company, when the claimant travelled as a gratuitous passenger. Hence, he prayed total exoneration of the appellant insurance company from paying compensation.

7. The learned counsel for the appellant in CMA(MD) No. 110 of 2013 has contended that the Tribunal erred in taking the disability sustained by the claimant at 90% when the functional disability is 100%. Further, the award under various heads is meagre and requires enhancement.

8. Though the appellant insurance company has contended that the Tribunal erred in fastening 50% liability on the appellant insurance company on the ground that the claimant travelled as a gratuitous passenger, I am not inclined to agree with the said contention as it is the categorical evidence of the claimant that at the time of accident, he travelled in the Tempo Van as loadman. No evidence was produced by the appellant insurance company that at the time of accident, the claimant did not travel as loadman. The relevant portion in the cross examination of the claimant by the appellant is extracted hereunder:--

9. Hence, the plea of the appellant that at the time of accident, the claimant travelled as gratuitous passenger and not as loadman is rejected and it is held that at the time of accident, the claimant travelled as a loadman. The finding of the Tribunal is thus confirmed.

10. Before the Tribunal, the claimant/PW1 deposed that prior to the accident, as a loadman, he earned Rs. 3,000/- per month. The age of the claimant was fixed as 36 as averred in the claim petition. PW2 Doctor assessed the disability suffered by the claimant due to amputation of his right hand at 90%. The Tribunal applying ''16'' multiplier awarded compensation of Rs. 5,18,400/- (Rs. 3000 X 12 X 16 X 90%) towards loss of income. I do not find any error in computation of loss of income.

11. Apart from the above, the Tribunal awarded Rs. 20,000/- towards pain and suffering. The claimant took treatment as inpatient from 15.07.2008 to

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02.08.2008. During treatment, his right hand from the right shoulder was amputated. Following the Division Bench judgment of this Court in United India Insurance Company Limited, Dindigul v. R. Karunanithi, (CMA No. 1511 of 2011 dated 19.07.2012), Rs. 1,00,000/- is awarded for pain and suffering.

12. Loss of amenities has been defined by the Full Bench of this Court in Cholan Roadways Corporation Ltd. Vs. Ahmed Thambi and Others, (2006) ACJ 2703 : (2006) 4 CTC 433 : (2006) 3 LW 1025 : (2006) 4 MLJ 362 , as "deprivation of the ordinary experiences and enjoyment of life and includes loss of the ability to walk or see, loss of a limb or its use, loss of congenial employment, loss of pride and pleasure in one''s work, loss of marriage prospects and loss of sexual function".

13. The claimant in this case was a loadman prior to the accident and certainly due to amputation of right hand, he lost his amenities. Hence, Rs. 75,000/- is awarded for loss of amenities. Further, considering the nature of injuries, the award of Rs. 4,000/- towards transport expenses, Rs. 5,000/- towards extra nourishment and Rs. 2,000/- towards mental agony and shock are enhanced to Rs. 10,000/- each. The award of Rs. 1,27,454/- awarded towards medical expenses is duly supported by Exs. P4 to P7-Medical Bills. The rate of interest awarded at 9% stands confirmed. The compensation is modified as hereunder:--

14. In the result, the appellant/claimant in CMA(MD) No. 110 of 2013 is entitled to compensation of Rs. 8,50,854/- with interest @ 9% from the date of claim to till the date of deposit. The 2nd respondent insurance company and the 3rd respondent transport corporation are directed to deposit Rs. 8,50,854/- with interest @ 9% from the date of claim to till the date of deposit in the ratio of 50:50, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/ claimant is permitted to withdraw the same by making necessary application before the Tribunal.

15. In the result, CMA(MD) No. 1319 of 2013 is dismissed and CMA(MD) No. 110 of 2013 is disposed of in the above terms. No costs. Consequently, M.P(MD) Nos. 1 and 2 of 2013 and 1 of 2015 are closed.

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