(2017) 06 MAD CK 0163

In the Madras High Court

Case No : 478 of 2017 and C M P(MD)No 5146 of 2017

The Oriental Insurance Company Limited — APPELLANT

Vs

R.Senthil @ Senthilkumr, & Ors. — RESPONDENT

Date of Decision : 15-06-2017

Acts Referred:

Citation : (2017) 06 MAD CK 0163

Hon'ble Judges : R.Subramanian

Bench : SINGLE BENCH

Advocate : R.Subramanian

Judgement

1. By consent of both the learned counsels, the Civil Miscellaneous Appeal itself is taken up for final disposal at the admission stage itself.

2. The Insurance Company which suffered an award for a sum of Rs.2,48,140/- for the injuries suffered by the first respondent/claimant in the accident that occurred on 10.11.2008, is the appellant.

3. The first respondent has claimed a sum of Rs.5 lakhs as compensation for the injuries suffered by him. According to the first respondent, the accident had occurred when he was driving his Hero Honda Motor-cycle on Pollachi-Palladam Road near Thasanaickenpalayam, the lorry belonging to the second respondent, insured with the appellant/Insurance Company, driven by its driver in a rash and negligent manner, came in the opposite direction, hit against the motor-cycle. The claimant suffered several grievous injuries which resulted in permanent disability.

4. The appellant/Insurance Company resisted the claim contending that admittedly three persons have travelled in the motor cycle and the accident had occurred in the middle of the road. Therefore, the amount of contributory negligence should be attributed to the injured claimant. The claim of compensation is also disputed.

5. The Tribunal upon consideration of the evidence held that FIR had been filed against the driver of the lorry and in the absence of examination of the driver of the lorry, it cannot be concluded that there is contributory negligence on the part of the injured claimant.

6. On the quantum, the Tribunal arrived at a disability at 45% and adopting multiplier method,awarded a sum of Rs.1,63,200/- towards disability, Rs.42,940/- towards medical expenses, Rs.10,000/- towards transportation and extra nourishment and Rs.20,000/- for pain and suffering and for loss of amenities. On the whole, the Tribunal has awarded a sum of Rs.2,48,140/-

7. Mr.Jawahar Ravindran, learned counsel for the appellant/Insurance Company would submit that for the functional disability of 45%, the Tribunal erred in adopting multiplier method. According to him, the Tribunal must have granted only Rs.2,000/- per percentage of disability. It is seen from the Ex.B2-Wound Certificate that injuries suffered by the claimant are fracture of the right Femur and lacerated injuries in the right knee joint. It is also seen that the claimant has undergone surgery and femur bone has joined properly. Therefore, the award of compensation for permanent disability by adopting multiplier method cannot be said to be correct. Therefore, the contention of the learned counsel for the appellant/Insurance Company deserves acceptance. Therefore the compensation is to be reassessed. On the ground of negligence, the Tribunal has rightly rejected the contention of the Insurance Company, since the Insurance Company has not chosen to examine the driver of the offending vehicle. FIR has been lodged against the lorry driver and in the absence of any evidence, either by the eye-witness or at least by the driver of the offending vehicle, I do not think that the finding the question of negligence could be interfered with. The quantum of compensation is determined as follows: The claimant is entitled to Rs.2,000/- per percentage of disability i.e.,Rs.90,000/- towards permanent disability. The Tribunal has not awarded any amount for future medical expenses. Considering the fact that the claimant has to undergo further surgeries for removal of plates, a sum of Rs.15,000/- is awarded towards future medical expenses. The Tribunal has also not awarded any amount towards attendant charges. It is admitted that the claimant had undergone surgeries for the correction of fracture of the right femur. He must have spent some money towards attendant charges. I deem it fit and proper to award a sum of Rs.10,000/- towards attendant charges. The award on the other heads namely medical expenses,transportation and extra nourishment and for pain and suffering and loss of amenities are confirmed and the total award would be as follows:

1.for permanent disability - Rs.90,000/-

2.for future medical expenses - Rs.15,000/-

3.for attendant charges -Rs.10,000/-

4.for medical expenses -Rs.42,940/-

5.for transportation and extra nourishment -Rs.10,000/-

6.for pain and suffering and for loss of amenities -Rs.20,000/-

7.for loss of income during treatment -Rs.12,000

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total Rs.1,99,940/-

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rounded off to Rs.2 lakhs.

8. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified and the total compensation is fixed at Rs.2 lakhs with interest at 7.5% p.a from the date of claim petition till the date of deposit and the appellant/Insurance Company is granted eight weeks time to deposit the award amount as modified above, less the amount already deposited. On such deposit, the first respondent/claimant is permitted to withdraw the entire award amount with accrued interest and costs,less the amount already withdrawn. If the Insurance Company deposited the amount, as per the award of the Tribunal, the appellant/Insurance Company is entitled to withdraw excess award amount, if any, from the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

