

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.1024 of 2015

M/s.National Insurance Company Ltd.,
Court Street, Tirupur.

... Appellant/3rd Respondent

Versus

1.Ms.Ammu (28 Y) ... Respondent-1/Petitioner
2.Mr.L.Sasidharan ... Respondent-2/Respondent-1
3.Santhaseelan. ... Respondent-3/Respondent-2

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act 1988 against the Decree and Judgment dated 17th April, 2013 passed in M.C.O.P.No.282 of 2010 on the file of Motor Accidents Claims Tribunal, (FTC-1) Tirupur.

For Appellant : Mr.G.Udayasankar

For Respondents : Mr.Ma.P.Thangavel for Ist Respondent

J U D G E M E N T

The appeal has been preferred by the Insurance Company against the award of Rs.4,05,550/- towards compensation for the injuries sustained by the claimant in the accident occurred on 25.12.2009.

2. Heard Mr.G.Udayasankar, learned counsel appearing for the appellant and the learned counsel appearing for the first respondent/claimant.

3. The only question to be decided is with regard to the quantum of compensation. The appeal is directed against the quantum of compensation.

4. The learned counsel appearing for the appellant would submit that 35% disability determined by the Tribunal for the injuries sustained by the claimant is on the higher side.

5. A perusal of the records would show that the claimant sustained fracture in left leg, tibia and fibula and also sustained mal-union and other abrasions. As revealed in medical records Ex.P2,P4 and P5 and from the deposition of PW2, Doctor, who is a

Orthopedic surgeon, because of injuries the claimant lost teeth and sensation in cheek. It is difficult for him for opening and closing the mouth because of the fracture in maxilla mandible. Hence, the determination of 35% disability determined at by the Tribunal cannot be found fault and the same is confirmed.

6. The claimant is aged about 28 years and is stated to be earning about a sum of Rs.6000/- per month. However, the Tribunal fixed the loss of income at Rs.4500/- per month, in the absence of any material evidence. The said determination is very reasonable and is in consonance with the principles laid down by the Hon'ble Supreme Court in New India Assurance Company Limited Vs. Smt. Kalpana and Ors reported (2007) 3 SCC 538, wherein even for a lady a sum of Rs.3,000/- was taken as loss of income after deduction of 1/3 towards personal expenses. Therefore, the loss of income of Rs.4,500/- determined by the Tribunal cannot be found fault with.

7. As per the age of the claimant, the proper multiplier is 18 and the same was rightly applied by the Tribunal. The Tribunal rightly calculated the loss of income as follows:

Rs.4500/- X 12 X 18 X 35% = Rs.3,40,200/-.

Rs.25,000/- towards pain and suffering; Rs.20,000/- towards loss of amenities; Rs.2000/- each towards extra-nourishment and transportation and Rs.16,350/- towards medical expenses based on Ex.P3 awarded by the Tribunal cannot be found fault with.

8. Hence, the award of the Tribunal Rs.4,05,550/- is confirmed with 7.5% per annum interest. The appellant is directed to deposit the entire award amount along with interest and costs within a period of four weeks from the date of the receipt of a copy of this order and on such deposit, the first respondent claimant is permitted to withdraw the entire award amount within one week.

9. The Tribunal already directed the Insurance Company to pay and recover the amount from the owner of the driver of the offending vehicle, who did not have valid licence. The said finding is confirmed. The appeal is dismissed. No costs. Consequently the connected M.P.No.1 of 2015 is also dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

The Motor Accidents Claims Tribunal, (FTC-1) Tirupur.

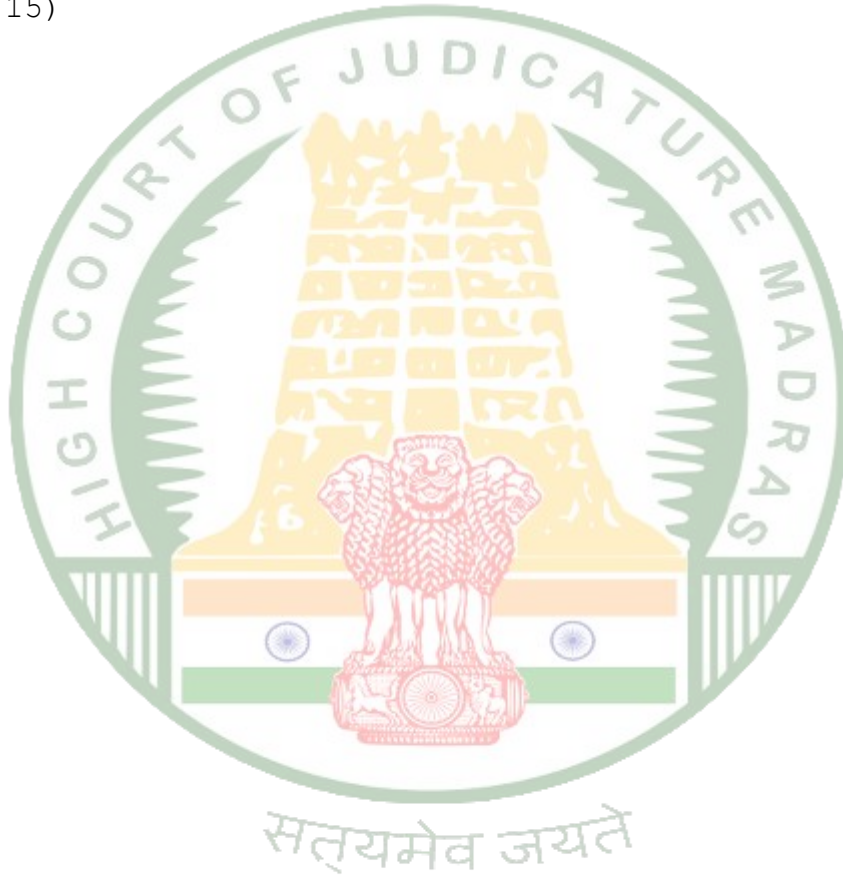
+1 CC to Mr. Ma. P. Thangavel (SR. NO. 28066)

+1 CC to Mr. G. Udayasankar, (SR. No. 28154)

C.M.A.No.1024 of 2015

RV (CO)

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