

N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2015

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THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA No.1251 OF 2015
and M.P.No.1 of 2015

M/s.National Insurance Co. Ltd.,
Motor Third Party claims,
No.751, Anna Salai,
Chennai - 600 002.

... Appellant / 2nd Respondent

vs.

1.Mr.Ganesan ... 1st Respondent / Petitioner
2.Mr.Venugopal ... 2nd Respondent / 1st Respondent

Prayer :- Civil Miscellaneous Appeal filed under Section 173 of M.V. Act 1988 against the decree and judgment passed in MCOP No.1683 of 2012 dated 17.11.2014 (Small Causes Court - VI Judge) at Chennai - District.

For Appellant : Mr.J.Chandran
For Respondents: Mr.K.Varadhakamaraj for R1

JUDGMENT

The appeal has been preferred by the insurance company against the award of Rs.3,45,000/- awarded by the tribunal as compensation for the injuries sustained by the first respondent in the accident occurred on 05.02.2012.

2. Heard Mr.J.Chandran, learned counsel appearing for the appellant and Mr.K.Varadha Kamaraj, learned counsel appearing for the 1st respondent / claimant.

3. The only question to be decided is with regard to the quantum of compensation awarded by the tribunal. The tribunal, based on the injuries and PW2 - doctor's evidence, determined the partial permanent disability at 45% and determined loss of future earning capacity at 15% as he sustained fracture in the left shaft of femur. Taking Rs.6500/- as the monthly income and adding 50% towards future prospects, the loss of income was arrived at Rs.9570/-. Applying appropriate multiplier 17 according to the age of the first respondent/claimant, awarded a sum Rs.2,98,350/- towards loss of

future earning capacity for 15% disability. Including other amounts, the tribunal awarded a sum of Rs.3,44,350/-, rounded off to Rs.3,45,000/- as compensation.

4. It is argued by Mr.J.Chandran, learned counsel appearing for the appellant that application of multiplier method is unwarranted in this case. The said contention has got force. Even though the doctor determined the disability at 45%, the tribunal determined the loss of earning capacity at 15%. In that event, the percentage of disability should be taken into consideration and accordingly, the compensation should have been awarded for the disability. Therefore, taking 45% as disability and awarding Rs.3,000/- per percentage of disability, this court awards a sum of Rs.1,35,000/- towards disability. No amount was awarded towards loss of income during the treatment period. Therefore, this court awards a sum of Rs.30,000/- under this head. Rs.6,000/- awarded towards medical expenses and Rs.5,000/- towards damage to clothes are confirmed. However, Rs.5,000/- each awarded towards transportation, extra nourishment and attender charges enhanced to Rs.10,000/-, Rs.20,000/- and Rs.10,000/- respectively. Similarly, Rs.10,000/- each awarded towards loss of amenities and pain & sufferings is enhanced to Rs.25,000/- each. Thus, the award of Rs.3,45,000/- is reduced to Rs.2,66,000/-, break-up as follows -

(1) Disability	...	Rs.1,35,000/-
(2) Transportation	...	Rs. 10,000/-
(3) Extra nourishment	...	Rs. 20,000/-
(4) Pain & Suffering	...	Rs. 25,000/-
(5) Medical expenses	...	Rs. 6,000/-
(6) Attender charges	...	Rs. 10,000/-
(7) Damages to clothes	...	Rs. 5,000/-
(8) Loss of income during treatment period	...	Rs. 30,000/-
(9) Loss of amenities	...	Rs. 25,000/-
Total	...	Rs.2,66,000/-

The rate of interest awarded by the tribunal at 7.5% shall remain unaltered.

5. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

7. The appellant/insurance company is directed to deposit the compensation awarded by this Court alongwith interest and costs, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount alongwith interest and costs, less the amount already withdrawn, if any. If the award amount has already been deposited, the

appellant/insurance company is permitted to withdraw the excess amount available in the deposit alongwith proportionate interest and costs.

Sd/-

Assistant Registrar

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//True Copy//

Sub Assistant Registrar

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To

The VI Judge,
Court of Small Causes,
Chennai.

Copy to: The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.K. Varadhakamarja, Advocate, S.R.No.31743

+1cc to Mr.J. Chandran, Advocate, S.R.No.31942

SAI (CO)
EU (24/07/2015)

CMA No.1251 OF 2015

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