

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 649 of 2015

&

M.P. No. 1 of 2015

National Insurance Company Limited,
1st Floor, Karthikeya Complex,
No.403, P10, Mettur Main Road,
Bhavani, Erode - 638 302. ...Appellant

Vs.

1. A. Yacoob
2. The Correspondent,
VRS Matriculation School,
3-A, 5th Vittalapuri Street,
Kattur,
Komarapalayam,
Trichengodu Taluk,
Namakkal District.
(2nd respondent was set exparte. Hence,
notice to the 2nd respondent may be
dispensed with.) ...Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 20.03.2012 passed in M.C.O.P. No. 443 of 2009 by the Motor Accidents Claims Tribunal (Sub Court), Sankari.

For Appellant :: Mr.K. Padmanabhan

For Respondents :: Mr.C. Kulanthaivel for
R1

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of Rs. 4,95,000/- passed by the Motor Accidents Claims Tribunal (Sub Court), Sankari, in favour of the 1st respondent for the injuries sustained by him in the accident, which occurred on 06.07.2009.

2. Heard Mr.K. Padmanabhan, learned counsel for the appellant and Mr. C. Kulanthaivel, learned counsel for the 1st respondent.

3. The 1st respondent/claimant sustained the following injuries, in the accident, which occurred on 06.07.2009, when the motorcycle driven by him, was hit by an Eicher School Van:

- "1. Lacerated deglove injury on right leg 6 x 2 x 1 inch
2. Contusion C deformity over the upper 1/3rd of right leg and right knee 6 x 4 inch.
3. Lacerated deglove injury over the dorsum of right ankle 4 x 3 x ½ inch.
4. Lacerated injury over the medial aspect of right ankle 1 x 1 x ½ inch C deformity.
5. Lacerated injury on right heel 3 x 1 x 1 inch. C avulsion of heel.
6. Abrasion in right hand 2 x 2 inch.
7. Abrasion in right soulder 3 x 3 x 2 inch.
8. Abrasion on left hip 4 x 4 inch.
9. Contusion on left side chest 3 x 3 inch and grievous injuries all over the body."

The 1st respondent/claimant was operated upon and plates and screws were fixed. Based on medical records, namely, Exs-P2, P6 to P9, P15 and P19, P.W.2 Doctor assessed the disability at 53%. However, the Tribunal, finding it to be on the higher side, fixed the disability at 49%. Taking the monthly income of the claimant as Rs.6000/-, after deducting one-third towards "Personal Expenses" and applying multiplier 16, "Loss of Income due to disability" was determined as Rs.3,76,320/-. After awarding amounts under other heads, totally, a sum of Rs.4,95,000/- was awarded as compensation together with interest @ 7.5% per annum.

4. The multiplier method adopted by the Tribunal, in arriving at "Loss of Income due to disability" has to be sustained as the claimant sustained various injuries, as extracted above, on account of which he underwent a surgery and he is also unable to do his day to day activities, as before. The sum of Rs.6000/- determined as monthly income for a self-employed person, in the absence of any proof regarding income, is on the higher side and therefore, this Court re-determines the monthly income of the 1st respondent at Rs.5000/- and the percentage of disability fixed by the Tribunal is modified to 40% and applying multiplier 10, instead of multiplier 16, as done by the Tribunal, "Loss of Income due to disability" is determined as follows:

Loss of Income due to disability :: Rs.5000 x 12 x 10 x 40/100
:: **Rs.2,40,000/-.**

The sum of Rs.59,800/- awarded by the Tribunal towards "Medical Expenses" as per Ex-P8 is confirmed. The sum of Rs.25,000/- awarded towards "Pain and Suffering" is too low and the same is enhanced to Rs.50,000/-; Rs.20,000/- awarded towards "Extra Nourishment" is enhanced to Rs.25,000/-; Rs.5000/- awarded each towards "Attendant Charges" and "Transportation Charges" is enhanced to Rs.10,000/- under each head and the sum of Rs.5000/- awarded towards "Loss of Amenities" is too low and the same is enhanced to Rs.25,000/-. As far as "Future Medical Expenses" is concerned, the Tribunal did not award any amount. The plates and screws which have been implanted have to be removed for which the claimant will have to undergo another operation. Therefore, a sum of Rs. 30,000/- is awarded under the said head. In all, a sum of Rs. 4,49,800/- is awarded as compensation to the 1st respondent/claimant together with interest @ 7.5% per annum.

5. It is represented by the learned counsel for the appellant that the entire amount, as awarded by the Tribunal, has already been deposited. Therefore, the 1st respondent/claimant is permitted to withdraw the amount, as per the award passed by this Court, together with interest and costs, within a period of one week from the date of receipt of a copy of this order. The balance amount, lying in deposit, before the Tribunal, shall be refunded to the appellant Insurance Company.

6. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal, to the tune of Rs.4,95,000/- is reduced to Rs.4,49,800/-. No costs. Connected M.P. is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

nv

To
The Motor Accident claims Tribunal
MACT (Sub Court), Sankari.

+1 cc to Mr.K.Padmanabhan, Advocate sr.18124
+1 cc to Mr.C.Kulanthaivel, Advocate sr.17721

aa16/04/2015

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