

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.06.2015

CORAM:

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.Nos.3842 of 2011 & 2612 of 2013
and
M.P.No.1 of 2011

National Insurance Company Limited,
Represented by its Branch Manager,
Mayiladuthurai Taluk,
T.M. Department,
Mayiladuthurai Town.Appellant in C.M.A.No.3842/2011

R.Partha SarathyAppellant in C.M.A.No.2612/2013

... Vs ...

1. R.Parthasarathy

2. K.Suresh Kumar

3. N.KannanRespondents in C.M.A.No.3842/2011

1. K.Suresh Kumar

2. The Branch Manager,
National Insurance Company Limited,
Mayiladuthurai.

3. KannanRespondents in C.M.A.No.2612/2013

Prayer in both C.M.As.:- Civil Miscellaneous Appeals filed under
Section 173 of Motor Vehicles Act against judgment and decree passed
in M.A.C.T.O.P.No.16 of 2008, dated 15.07.2011 on the file of the
learned Chief Judicial Magistrate, (Motor Accidents Claims Tribunal),
Thiruvavur.

In C.M.A.No.3842/2011

For Appellant : Mrs.N.B.Surekha

For R-1 : Mr.M.Thamizhavel

In C.M.A.No.2612/2013

For Appellant : Mr.M.Thamizhavel

For R-2 : Mrs.N.B.Surekha

COMMON JUDGMENT

The appeals have been preferred by the Insurance Company as well as by the claimant aggrieved over the quantum of compensation of Rs.7,79,519/- awarded by the Tribunal for the injury sustained by the claimant in the accident occurred on 07.05.2008.

2. Heard Mrs.N.B.Surekha, learned counsel appearing for the Insurance Company and Mr.M.Thamizhavel, learned counsel appearing for the claimant and perused the records.

3. The only question to be decided is with regard to the quantum of compensation awarded by the Tribunal. It is evident from the medical records that the claimant sustained dislocation of bone in right hip and fracture of the Tibia bone in right leg. Even though P.W.2-Doctor determined the disability at 75%, the Tribunal determined the disability only at 50%. In the absence of any contra evidence, the Tribunal ought not to have reduced the disability and therefore, this Court re-determined the disability at 75%. The claimant underwent surgery on 15.06.2008 and plate and screw were fixed. On 10.07.2008, through surgery, bone cement was also fixed. Again on 12.11.2008, hip transplantation was done and therefore, the claimant is unable to get up and walk and sit and squat upon the floor. In view of that, P.W.2-Doctor rightly determined the disability at 75% and because of the disability, the Tribunal rightly applied the multiplier of 18 to arrive at the loss of income.

4. The claimant is a diploma holder in Chemical Technology as proved by Ex.A.17 and his age is 26 and he is a bachelor. He was working as a process operator (Technician) in a private Limited Company and was said to be earning about a sum of Rs.4,900/-. As per Ex.A.20, the monthly salary of the claimant is about

Rs.4,166.67/-. However, the Tribunal, took only a sum of Rs.5,000/- as monthly income, including future prospects. This Court re-determines the monthly income at Rs.6,000/- and adopts multiplier 18, according to the age of the claimant. The loss of income is calculated as follows:- $\text{Rs.6,000/-} \times 12 \times 18 \times 50/100 = 6,48,000/-$. A sum of Rs.50,000/- awarded by the Tribunal towards pain and sufferings is very reasonable and hence, the same is confirmed; a sum of Rs.5,000/- awarded by the tribunal towards Extra Nourishment is too low and hence the same is enhanced to Rs.15,000/-; a sum of Rs.3,000/- awarded by the Tribunal towards Attendant Charges is very reasonable and hence the same is confirmed; a sum of Rs.5,000/- awarded by the Tribunal towards Transportation is very reasonable and hence the same is confirmed; a sum of Rs.25,000/- awarded by the Tribunal towards loss of Marital Prospects is too low and therefore, the same is enhanced to Rs.50,000/-; a sum of Rs.45,000/- awarded by the Tribunal towards loss of income during treatment is deleted and a sum of Rs.1,06,519.15 awarded by the Tribunal towards medical expenses is very reasonable and hence the same is confirmed. Thus, the amount of Rs.7,79,519/- awarded by the Tribunal is hereby enhanced to Rs.8,77,519/-, rounded off to Rs.8,78,000/- and break-up is as follows :-

[i]	Loss of Income	:	Rs.6,48,000/-
[ii]	Pain & Sufferings	:	Rs. 50,000/-
[iii]	Extra Nourishment	:	Rs. 15,000/-
[iv]	Attendant Charges	:	Rs. 3,000/-
[v]	Transport Expenses	:	Rs. 5,000/-
[vi]	Loss of Marital Prospects	:	Rs. 50,000/-
[vii]	Loss of income during the period of treatment	:	----
[viii]	Medical Expenses	:	Rs.1,06,519/-
			Rs.8,77,519/-
			Rounded off <u>Rs.8,78,000/-</u>

The rate of interest awarded by the Tribunal at 7.5% shall stand confirmed.

5. In the result, the appeal preferred by the Insurance Company viz., C.M.A.No.3842 of 2011 is dismissed and C.M.A.No.2612 of 2013 preferred by the claimant is partly allowed enhancing the compensation from Rs.7,79,519/- to Rs.8,78,000/-.

6. It is submitted by the learned counsel for the Insurance Company that as per the award of the Tribunal, the entire amount has already been deposited in the Trial Court. The appellant in C.M.A.No.3842 of 2011/Insurance Company is directed to deposit the enhanced compensation along with interest, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant in C.M.A.No.2612 of 2013 / claimant is permitted to withdraw the same.

7. The additional Court fee shall be paid by the appellant in C.M.A.No.2612 of 2013 / claimant for the enhanced amount.

8. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jrl

To

1. The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal,
Thiruvavur.
2. The Branch Manager,
National Insurance Company Limited,
Mayiladuthurai.
3. The Section Officer, V.R. Section,
High Court, Madras.

2 CCs to Mrs.N.B.Surekha, Advocate SR.No. 30757 & 30758

2 CCs to Mr.M.Thamizhavel, Advocate SR.No. 30597 & 30598

C.M.A.No.3842 of 2011
and C.M.A.No.2612 of 2013

TEJ (CO)

PSI (12.08.2015)