

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.2.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.3731 of 2013

The Branch Manager

National Insurance Company Ltd.,

Coimbatore

....Appellant/3rd Respondent

Versus

1)Mr.K.M.Ponnusamy

...1st Respondent/Petitioner

2)Mr.Muthuraj

3)Mr.Jaiganesh

....2nd & 3rd Respondents/
1st and Respondents

(Respondents 2, driver of the vehicle, made exparte, hence notice to respondent-2 is dispensed with and notice to respondent-3, owner of the vehicle given up)

This civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 31st January, 2011 passed in M.C.O.P.No.297 of 2008 on the file of Motor Accidents Claims Tribunal, (FTC-5) Tirupur.

For Appellant : Mr.G.Udaya Sankar

For Respondents : Mr.Ma.Pa.Thangavel for R1
R2-Exparte
R3-Given up

J U D G E M E N T

The appeal has been preferred by the Insurance Company against the award of Rs.2,09,760/- as compensation for the 32% disability sustained by the first respondent in the accident which occurred on 4.12.2005. The appeal has been preferred only on the question of quantum alone.

2. Heard Mr.G.Udayasankar, learned counsel appearing for the appellant and Mr.Ma.Pa.Thangavel, learned counsel appearing for the first respondent.

3. Since the quantum alone is questioned, the other issue liability is not gone into. The Tribunal based on P.W.2, Doctor's evidence and Ex.P2 wound certificate, Ex.P3, discharge summary issued by Nataraj Hospital, Ex.P4, Discharge summary given by Mrs.Saraswathi, Ex.P5 Disability Certificate, Ex.P6, X-ray, determined the disability at 32%. The first respondent suffered fractures in the face, skull and hemorrhage in brain. PW2, Doctor examined the claimant to ascertain the movement of joints and also sensation. Since the claimant sustained blood clog in right side of the brain, consequently, his left arm and leg have become weak and the tissues lost its strength. Moreover, the movement in the joint of left hand and left leg has become low. Apart from that the claimant is suffering from head ache and he is unable to concentrate to do any work. Thus, 32% disability has been proved and the determination arrived at by the Tribunal cannot be found fault with. Though income was claimed at Rs.7000/- per month, in the absence of any evidence regarding income, the Tribunal rightly determined Rs.4500/- per month. However, wrongly adopted 1/3 towards personal expenses, which is applicable in the case of death. Hence the said reduction is set aside.

4. Though the claimant stated originally in the claim petition his age was 45, in the body of the claim petition, it is stated that the age of the claimant was 51 and the appropriate multiplier is 11 and therefore, instead of adopting multiplier-13, 11-multiplier is adopted. The loss of income is determined as follows:

$\text{Rs.4500/-} \times 12 \times 11 \times 33/100 = 1,96,020/-$.

Rs.30,000/- towards pain and suffering, Rs.10,000/- towards Transportation, Rs.10,000/- towards Extra nourishment, Rs.10,000/- towards loss of amenities awarded by the Tribunal are all confirmed. This Court enhances the award amount from Rs.2,09,760/- to

Rs.2,56,020/- rounded to Rs.2,60,000/- along with 7.5% interest and costs. Even though the appeal has been preferred by the insurance company against the award of Rs.2,09,760/-, this court, applying the right multiplier, re-determines the amount and awards a sum of Rs.2,50,000/- in an endeavor to award just and adequate compensation by invoking Order 47 Rule 33 C.P.C. The appellant is directed to deposit the entire enhanced award amount as per the order of this court along with interest and costs, within four weeks from the date of the receipt of a copy of the order and on such deposit, the first respondent/claimant is permitted to withdraw the entire award amount as per order of this court along with interest and costs. The appeal is disposed of. No costs. Consequently the connected M.P.No.1 of 2013 and M.P.No.1 of 2014 are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vk

To

The Motor Accidents Claims Tribunal,
(FTC-5), Tirupur.

1CC to M/s. Ma.P. Thangavel, Advocate SR 6551

1CC to Mr.G. Udaya Sankar, Advocate SR 6005

सत्यमेव जयते

C.M.A.No.3731 of 2013

GP [CO]
PSI 31.03.2015

WEB COPY