

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 3761 of 2013

&

M.P. No. 1 of 2013

The Branch Manager,
The Oriental Insurance Co.Ltd.,
Branch Office,
No.25-C, Arunagiri Complex,
III Floor, Bypass Road,
Hosur.

..Appellant/2nd Respondent

Vs.

1. Muniraj
 2. M. Duraisamy
(2nd respondent set ex parte in Lower Court)
- ..Respondents/Petitioner and 1st Respondent.

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 22.04.2013 passed in M.C.O.P. No. 182 of 2013 by the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant :: Mr.M.B. Gopalan

For Respondents:: Mr.Mukund R. Pandian 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.3,67,626/- passed by the Motor Accidents Claims Tribunal (Special Sub Court), Krishnagiri, for the injuries sustained by the 1st respondent/claimant in the accident, which occurred on 14.05.2006.

2. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

3. Learned counsel for the appellant would submit that the 1st respondent/claimant sustained only fracture of femur and no surgery was conducted. Further, not even Discharge Summary was marked by the claimant. Under such circumstances, the application of multiplier for calculating "Loss of Earning Capacity" is unwarranted.

4. However, the learned counsel for the 1st respondent/claimant would submit, relying upon the judgment of the Honourable Supreme Court rendered in Kumari Kiran V. Sajjan Singh and another reported in 2014 ACJ 2550, wherein even for 30% disability, multiplier method was adopted, that the multiplier method adopted by the Tribunal is justified.

5. A perusal of the records would show that the claimant sustained fracture of femur bone and there was malunion with angulation of 5 degrees. In view of the above, traumatic stiffness occurred in muscle and knee, resulting in restricted movement of muscle and knee in hip and right knee portion. The claimant also suffered loss of four teeth. But, as rightly pointed out by the learned counsel for the appellant, no surgery was done and not even Discharge Summary was marked by the 1st respondent/claimant. Under such circumstances, it cannot be said that there was loss of earning power. If at all, the claimant is entitled to compensation only under "Disability". Hence, the multiplier method adopted by the Tribunal is set aside.

6. For 30% disability, this Court awards Rs.3000/- per percentage of disability, totalling to Rs.90,000/- towards "Disability". The sum of Rs.20,000/- awarded towards "Loss of Expectation of life" and "Loss of Marital Prospects" is unwarranted to the facts of the case and the same is deleted. Likewise, the sum of Rs.20,000/- awarded towards "Future Medical Expenses" is unnecessary, in the absence of any medical evidence. Instead, a sum of Rs.20,000/- is awarded towards "Loss of Amenities". The sum of Rs.25,000/- awarded towards "Pain and Suffering" and Rs.12,000/- awarded towards "Partial Loss of Income", Rs.6,426/- awarded towards "Medical Expenses", Rs.10,000/- awarded towards "Attendant Charges" and Rs.15,000/- awarded towards "Transportation and Extra Nourishment" are confirmed. Hence, the award of the Tribunal, to the tune of Rs. 3,67,626/- is reduced to Rs. 1,78,426/-. The rate of interest awarded by the Tribunal @ 6% per annum stands confirmed.

7. Since the driver of the vehicle did not have valid driving licence, pay and recovery was ordered by the Tribunal and the said direction is also confirmed.

8. The appellant is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire amount within a period of one week thereafter. If the appellant had already deposited the amount, as per the award of the Tribunal, the excess amount, lying in deposit shall be refunded to the appellant.

9. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Connected M.P. is closed.

nv

-s/d-
Deputy Registrar(J)
Dt:24/3/2015

True Copy

Sub-Assistant Registrar

To

The MACT (Special Sub Judge),
Krishnagiri.

Copy to:

The Section Officer,
V.R.Section, High Court,
Madras.

+ 1 cc to Mr.Mukund R.Pandiyan, Advocate SR 12644

+ 1 cc to Mr.M.B.Gopalan, Advocate SR 12407

ksj (co)
prk 26/3



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