

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:- 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.19 of 2016

and

C.M.P.No.82 of 2016

The Branch Manager,
M/s.National Insurance Co. Ltd.,
Erode Perundurai Road,
Erode District.

...Appellant/Respondent III

Versus

1.Jayaraman
2.Y.Villiam Thomas
3.L.Mohanraj

...Respondents 1-3/Petitioner/
Respondents 1 and 2

Prayer: Civil Miscellaneous Appeal filed under section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.01.2013 made in M.C.O.P.No.142 of 2011 on the file of the Motor Accidents Claims Tribunal, Perundurai at Erode District.

For Appellant :: Mr.J.Chandran

For Respondents :: Mr.A.K.Kumaraswamy for R1

J U D G M E N T

Aggrieved by the impugned judgment and decree passed by the learned Motor Accidents Claims Tribunal, Perundurai at Erode District in MCOP No.142 of 2011 dated 23.01.2013 awarding a sum of Rs.4,30,000/- as against the claim of Rs.5,00,000/- for permanent disability suffered by the injured respondent, the present appeal is filed by the National Insurance Company Limited.

2.Mr.J.Chandran, learned counsel appearing for the Insurance Company would submit that for the multiple injuries, viz., head injury and stomach injury sustained by the injured claiming a huge amount of Rs.5,00,000/-, the learned Tribunal has wrongly

awarded a sum of Rs.4,30,000/- accepting 40% permanent disability. He would further submit that before fixing 40% permanent disability, the whole body and nature of the injury has to be decided properly but in the present case, the learned Tribunal, on the basis of the disability certificate marked as Ex.P15 issued by Dr.Periyasamy P.W.3, has simply accepted 40% disability. Thereafter, the learned Tribunal fixing a sum of Rs.4,500/- as notional income of the injured aged about 24 years who was claiming to be a mason, has adopted the multiplier method to arrive at the loss of earning capacity on the basis of the following formula, $Rs.4,500 \times 12 \times 17 \times 40 / 100$) and a huge sum of Rs.3,67,200/- has been awarded. The said amount which is on the higher side, has to be decided by this court but this court is not able to see any merits on his submission.

3.The reason is that admittedly, on the date of accident, 26.04.2011, the injured aged about 24 years claiming to be a mason was driving his moped bearing Registration No.TN33-8334 at about 6.00 a.m. on Erode to Perundurai main road, at that time, the offending vehicle bearing Registration No.TNV 9219 driven by its driver came in a rash and negligent manner and hit against the injured, as a result, he suffered not only head injuries but also injuries in his stomach, which has been properly certified by Dr.Periyasamy P.W.3 giving disability certificate marked as Ex.P.15. As the Tribunal reduced the disability to 40% and after considering the facts, the learned Tribunal has rightly fixed the notional income of Rs.4,500/-p.m. which in my considered view, cannot be on the higher side. As the injured who was claimed to be a mason, therefore for the permanent disability at 40% fixed by the learned Tribunal in view of the fact that the head injuries and stomach injuries on the basis of the acceptable evidence, the learned Tribunal applying the multiplier method to arrive at loss of earning capacity, has fixed Rs.3,64,200/- ($Rs.4,500 \times 12 \times 17 \times 40 / 100$) however with regard to conventional heads, Rs.10,000/- has been awarded towards pain and suffering, Rs.5,000/- has been awarded towards nourishment, Rs.3,000/- for transport expenses and Rs.44,948/- has been awarded to meet out the medical expenses on the basis of the evidence claimed by the claimant. Therefore, this court is not able to see unreasonableness in the award amount passed by the Tribunal. Accordingly, the award amount passed by the learned Tribunal is confirmed. The civil miscellaneous appeal fails and the same is dismissed. No costs. The connected miscellaneous petition is also dismissed.

4.If the amount is not deposited, the Insurance Company is granted four weeks time to deposit the entire award amount along with interest. On such deposit, the claimant is directed to

withdraw the award amount by moving appropriate application before the Tribunal.

sd/-
Assistant Registrar(CCC)

/TRUE COPY/

Sub-Assistant Registrar

vri

To
The Motor Accident Claims Tribunal,
Perundurai,
Erode District.

+1 CC to MR.A.K.Kumaraswamy Advocate. SR.NO. 1844

+1 CC to MR.J.Chandran Advocate. SR.NO. 1998

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CO-PVR
JD 02/02/2016



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