

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.902 of 2015

and

M.P.No.1 of 2015

The Divisional Manager
M/s.National Insurance Co.Ltd
No.110, J.N.Street
Puducherry-605 001

... Appellant

Vs

1.Sastha
2.R.Kandasamy

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1989, against the order and decree passed in M.C.O.P.No.402 of 2010 on 07.11.2014 on the file of the Motor Accidents Claims Tribunal (II Additional Subordinate Judge) Cuddalore.

For appellant : Mr.J.Chandran

For respondents : M/s.Sreethi Law Firm.
Mr.R.Sreedhar for R1.
R2-Not ready in Notice.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

The National Insurance Company is on appeal challenging the award dated 07.11.2014 passed in M.C.O.P.No.402 of 2010 on the file of the Motor Accidents Claims Tribunal (II Additional Subordinate Judge), Cuddalore.

2. It is a case of injury. As per the claim petition filed in M.C.O.P.No.402 of 2010 before the Tribunal, on 23.02.2010, the first respondent herein/Sastha-claimant was riding the TVS XL Moped with Regn.No.TN-01-M-8078 from south to north, at a

moderate speed, keeping extreme left and at that time, the 2nd respondent's Tractor with Regn.No.TN 67-4197 came from the opposite direction in a rash and negligent manner and dashed against the first respondent herein and as a result, he sustained fracture and multiple grievous injuries and took treatment at Government Head Quarters Hospital, Cuddalore and other Private Hospitals. Hence, he filed a claim petition before the Motor Accidents Claims Tribunal, Coimbatore, for compensation in a sum of Rs.7,00,000/-.

3. The Tribunal based on the evidence let in on both sides, held that the accident occurred solely due to the negligent driving of the driver of the 2nd respondent's vehicle and further held that the appellant herein being the insurer of the 2nd respondent's vehicle, both 2nd respondent herein and National Insurance Company are jointly and severally liable to pay compensation. On such finding, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of earning capacity	Rs. 12,96,000/-
2	Transport to Hospital	Rs. 5,000/-
3	Special Diet	Rs. 5,000/-
4	Loss of Marriage Prospects	Rs. 50,000/-
5	Pain and sufferings at Rs.10,000/- per fracture (2) + Rs.7500 for surgery (2)	Rs. 35,000/-
6	Attendant charges	Rs. 5,000/-
7	Medical expenses Ex.P.21	Rs. 5,200/-
8	Loss of amenities for whole body 1/3 (27% x 2000)	Rs. 54,000/-
	Grand Total	Rs. 14,55,200/-

4. The only serious objection raised by the learned counsel for the appellant-Insurance Company is with regard to the grant of Rs.12,96,000/- towards loss of earning capacity. According to the learned counsel for the appellant, 80% disability is not at all disputed, however, considering the occupation of the claimant, who is said to be a Centring Labour, the monthly income could only be taken at a sum of Rs.5000/- and accordingly, loss of earning capacity could be fixed at Rs.5,76,000/-. Insofar as the compensation towards other heads are concerned, there was no objection by the appellant's counsel and we find the same are just and reasonable.

5. Heard the learned counsel for the first respondent on the above submissions of the learned counsel for the appellant.

6. Taking into consideration the submission made by the learned counsel for the appellant, accepting the same, we hereby, fix Rs.5000/- as monthly income of the claimant and the loss of earning capacity of the victim is modified herein by adopting the same 80% disability and thus it is fixed at Rs.5,76,000/- [5000 x 12 x 80% x 12 years]. While modifying the amount granted by the Tribunal towards loss of earning capacity, we sustain the other amounts granted by the Tribunal and the modified award is as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of earning capacity	Rs.7500 x 12 x 80% x 18 years =Rs.12,96,000/-	Rs.5000 x 12 x 80% x 12 years =Rs.5,76,000/-
2	Transport to Hospital	Rs. 5,000/-	Rs. 5,000/-
3	Special diet	Rs. 5,000/-	Rs. 5,000/-
4	Loss of marriage prospects	Rs. 50,000/-	Rs. 50,000/-
5	Pain and suffering	Rs. 35,000/-	Rs. 35,000/-
6	Attender Charges	Rs. 5,000/-	Rs. 5,000/-
7	Medical Expenses Ex.P.21	Rs. 5,200/-	Rs. 5,200/-
8	Loss of amenities	Rs. 54,000/-	Rs. 54,000/-
	Total	Rs.14,55,200/-	Rs.7,35,200/-

There is no serious objection with regard to grant of interest at 7.5% per annum.

7. Accordingly, this Civil Miscellaneous Appeal is partly allowed as follows:

- (i) The award of the Tribunal is reduced to Rs.7,35,200/- from Rs.14,55,200/-;
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The claimant is permitted to withdraw the modified award amount.

- (iv) The appellant Insurance Company is at liberty to withdraw the excess amount, if any, deposited before the Tribunal.
(v) There will be no order as to costs in this appeal.
(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal
(II Additional Subordinate Judge)
Cuddalore.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.13057

+1cc to Mr.R.Sreedhar, Advocate, S.R.No.12697

C.M.A.No.902 of 2015

AD(CO)
CA(31/05/2016)

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