

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM

THE HON'BLE MR.JUSTICE N. SESHASAYEE

C.M.A.No.389 of 2008  
and M.P.No.1 of 2008

National Insurance Co. Ltd.,  
Pondicherry. ...Appellant/2nd Respondent

Vs

1.Mathappan ...1st Respondent/Petitioner  
2.Bakrudeen ...2nd Respondent/1st Respondent  
(2nd respondent ex parte in lower Court  
and herein notice may be dispensed with)

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in MCOP.No.295 of 2005 dated 07.08.2006 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Chidambaram.

For Appellant : Mr.N.Vijayaraghavan  
For 1st Respondent: Royan Law Associates [for R1]

JUDGMENT

1. This appeal has been filed by the appellant Insurance Company on the twin grounds that the victim in question was an unauthorised occupant on the insured goods vehicle involved in the accident and the award for Rs.2,54,800/- with interest and costs for assessed disability of 30% arising out of fracture of the right elbow is excessive.

2. The accident had taken place on 12.02.2005 at about 10.00 p.m. when the lorry bearing No. TN 45 T 2792 in which the claimant had travelled as a representative of the owner of the goods carried in the vehicle met with an accident. In the said accident, the claimant has suffered fracture to his right hand and also injury to his right shoulder and said to have lost mobility of the right hand. For the injury that he has suffered claimant has sought a compensation of Rs.3,00,000/-, against which the Tribunal has granted Rs.2,54,800/- payable with interest @ 8% per annum. In arriving at its decision the Tribunal has considered:

- The evidence of P.W.2, the orthopaedic surgeon who has opined vide Ex.A21-disability certificate that the claimant had suffered 30% permanent disability.
- Evidence of the employer of the claimant who has spoken to the monthly income of the claimant at between Rs.4,000 and Rs.5,000/-, based on which the Tribunal fixed the annual income of the claimant at Rs.48,000/-.

On these constituent factors of the multiplicand, the Tribunal applied 17 as the multiplier and reduced it to the extent of disability suffered (30%) and arrived at a compensation of Rs.2,44,800/- towards loss of earning capacity. The remainder portion of the award chiefly represents general damages awarded.

3. Before the Tribunal the appellant/insurer chiefly contended that there was no policy cover for meeting the liability of the claimant as he had travelled in a goods vehicle as an unauthorised occupant. However, it has not let in any oral or documentary evidence to prove the point it has pleaded. This is highlighted in paragraph 4 of the impugned award. When law casts a burden on the insurer it would be an adventure to pursue a defence that it has not been able to prove.

4. On quantum also, the injuries are grievous and there is a reasoned discussion for adopting multiplier method where the victim was aged 33 years and a sweet meat cook by avocation, has suffered injury to his right elbow which it is needless to mention would directly impact his avocation. I find the manner of assessment of compensation is justified.

5. I find no merit in the appeal and the same is dismissed without costs. The insurer shall satisfy the award in four weeks from the date of receipt of a copy of the order less any sum already desposited. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,  
(Sub Judge),  
Chidambaram.

2.The Section Officer,  
VR Section, High Court, Madras-104.

+lcc to M/S.N.Vijayaraghavan, Advocate sr.71534

C.M.A.No.389 of 2008

svi[co]  
srg 05/01/2017



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