BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016
Coram:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**C.M.A(MD)No.762 of 2015**
**and**
**M.P.(MD)No.1 of 2015**

The Branch Manager,
National Insurance Co. Ltd.,
No.63, Rasi Plaza,
West Pradakshanam Road,
Karur. .. Appellant / Respondent No.2

Vs.

1.I.Nagarathinam .. Respondent / Petitioner
2.R.Kumarasamy .. Respondent/ Respondent-1

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decreetal order dated 28.11.2014 and made in M.C.O.P.No.65 of 2013, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Karur.

For Appellant : Mr.S.Srinivasa Raghavan
For Respondents : Mr.N.Sudhagar Nagaraj (for R1)
Mr.S.Gokulraj (for R2)

**JUDGMENT**

The appellant/National Insurance Company has filed the present C.M.A(MD)No.762 of 2015, challenging the award passed in MCOP.No.65 of 2013, dated 28.11.2014, on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Karur.

2.It is a case of an injury caused in the accident took place on 15.04.2013 around 1.30 p.m. near Somur to Karur Road. The injured victim filed an application seeking compensation before the Tribunal. Considering the facts and circumstances of the case, the Tribunal awarded Rs.9,75,200/- as total compensation. Challenging the same, the appellant/National Insurance Company has preferred this appeal challenging the quantum.

3.The learned counsel for the appellant/Insurance Company contended that the compensation amount of Rs.3,40,200/- awarded for loss of income is erroneous. In view of the fact that the partial permanent disability of the insured was assessed as 35% by the Doctor and therefore the Tribunal ought not to have adopted multiplier. It is a case of an injury and the assessment of partial permanent disability is 35% and adaptation of multiplier is contrary to the principles laid down by the Hon'ble Supreme Court of India as well as this Court. Such being the case, the award of compensation require re-consideration and reduction in respect of the future loss of income.



4.The learned counsel for the respondent opposed the appeal by stating that the respondent/claimant sustained grievous injury resulting disability and therefore, the future loss of income fixed by the Tribunal in accordance with the procedure requires no re-consideration.

5.Further, the learned counsel for the respondent said that the respondent/claimant under gone major surgery and therefore the quantum of compensation is to be confirmed. Considering the facts and circumstances, this Court is of the view that the adaptation of the multiplier in the present case on hand is erroneous. In view of the fact that the partial permanent disability was admittedly assessed as 35%, which was admitted before the Tribunal. Such being the findings of the Tribunal, the Tribunal ought not to have adopted multiplier, contrarily the Tribunal can very well grant Rs.3,000/- for 1% for partial permanent disability and this Court is inclined to modify the compensation in this regard. Accordingly, the quantum of compensation under the head of future loss of income is modified from Rs.3,40,200/- to Rs.1,05,000/-. In view of this reduction in the future loss of income, this Court is inclined to enhance the compensation under the head of medical assistants from Rs.5,000/- to Rs.15,000/-; for pain and suffering from Rs.20,000/- to Rs.50,000/- and for future medical expenses of Rs.30,000/- to Rs.50,000/-. Accordingly, the total compensation of Rs.9,75,200/- is modified as Rs.8,00,000/-. The respondent/claimant is entitled to get total compensation of Rs.8,00,000/-. Consequently, the Civil Miscellaneous Appeal is allowed, by modifying the award amount of Rs.9,75,200/- to Rs.8,00,000/-.

6.The learned counsel for the appellant/Insurance Company represented that the entire award amount has already been deposited with accrued interest. The respondent/claimant has already been withdrawn 50% of the award amount and the respondent/claimant is permitted to withdraw the balance award amount with accrued interest through RTGS, by filing necessary application before the Tribunal. The appellant/Insurance Company is permitted to withdraw the remaining deposited amount with proportionate accrued interest by filing necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True copy/



Sub Assistant Registrar

To
The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate), Karur.

+1 CC to Mr.S.GokulRaj, Advocate, SR No. 73785.
+1 CC to Mr.S.Srinivasa Raghavan, Advocate, SR No. 74161.
VSA
PSM/SV-MMS/04.04.2017/3P/4C

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