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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.Nos.2006 & 2007 of 2006 and
M.P.No.1 of 2006 in
C.M.A.No.2006 of 2006 and
M.P.No.1 of 2006
in C.M.A.No.2007 of 2006

National Insurance Company Limited,
Branch Office 1, Post Box No.15,
Thanthai Periyar Perangadi,
Near Old Bus Stop,
Salem 1.

..Appellant/2nd Respondent in both CMAs

..Vs..

1.Mani @ Dharmaraj .. 1st Respondent/Claimant

2.Baskar

.. 2nd Respondent/1st Respondent in CMA.No.2006 of 2006

1.K.Rajeswari ..1st Respondent/Claimant

2.Baskar .. 2nd Respondent/1st Respondent in CMA.No.2007 of 2006

PRAYER in C.M.A.No. 2006 of 2006 and 2007 of 2006: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 06.09.2005 in MCOP.No. 855 of 2004, and 856 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court 3), Namakkal.

IN Both C.M.As.

For Appellant : No appearance

For Respondents : Mr.S.Silambanan for R1
No appearance for R2



COMMON JUDGMENT

C.M.A.Nos. 2006 of 2006 and 2007 of 2006 are filed by the National Insurance Company Limited, Salem against the orders passed by Motor Accidents Claims Tribunal, Additional District Judge, Fast Track Court 3, Namakkal in M.C.O.P.Nos. 855 of 2004 and 856 of 2004, respectively questioning the quantum of compensation awarded by the tribunal in both the above said MCOPs.

2. For the sake of convenience, the claimants in M.C.O.P.No.855 of 2004 and 856 of 2004 are referred to as first claimant (Mani @ Dharmaraj) and second claimant (K.Rajeswari) respectively.

3. The claimants filed the above said M.C.O.P.Nos. 855 of 2004 and 856 of 2004 under Section 166 of the Motor Vehicles Act, 1988 seeking compensation for the injuries sustained by the first claimant and for the damage of the car bearing Registration No. TN 28 C 7557 belonging to the second claimant respectively in a road accident that took place on 21.07.2001.

4. The brief case of the first and second claimants is as follows:

On 21.07.2001, at about 06.00 pm, when the first claimant was travelling with his friends in a car bearing Registration No. TN 28 C 7557 on Salem - Namakkal road, a speeding tempo van bearing Registration No. TN 45 D 1345, belonging to the second respondent and insured with the present appellant, hit the car, as a result of which, the first claimant sustained grievous injuries and the car bearing Registration No. TN 28 C 7557 belonging to the second claimant got damaged.

5. According to the claimants, the rash and negligent driving of the driver of the tempo van bearing Registration No. TN 45 D 1345 was the cause of the accident and that since, the said van was insured with the present appellant/National Insurance Company Limited, both of them are jointly and severally liable to pay compensation to them.

6. The owner of the tempo van bearing Registration No. TN 45 D 1345 remained absent before the tribunal and therefore, he was set ex-parte. The present appellant/ National Insurance Company Limited contested the claim petition. The learned Additional District Judge, Fast Track Court 3, Namakkal after analysing the evidence of record, awarded a sum of Rs.2,15,000/- to the first claimant and Rs.1,20,000/- for the second claimant together with interest at the rate of 7.5% per annum.



7. Aggreived over the orders passed by the tribunal, the National Insurance Company Limited, Salem filed appeals in C.M.A.Nos.2006 of 2006 and 2007 of 2006 under Section 173 of the Motor Vehicles Act, 1988.

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8. A perusal of the medical records shows that the first claimant has lost his vision on his left eye. Dr.K.Muruganandham has assessed the partial permanent disability as 30% as evidenced by the disability certificate (Ex.P12). The contention of the first claimant is that he was working as a lorry driver and on account of the accident, he could not continue his profession as the driver. The Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

"8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in



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some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9. The Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is a permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

9. Since the first claimant was a driver by profession and has lost vision on his left eye, the tribunal was right in adopting multiplier method. Therefore, a sum of Rs.1,80,000/- was awarded towards partial permanent disability and loss of income. The various heads under which the award has been passed by the tribunal in M.C.O.P.No.855 of 2004 is extracted hereunder:



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S.No	Head	Amount granted
1.	Partial permanent disability and loss of income	Rs.1,80,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Transportation and extra nourishment	Rs.10,000/-
4.	Medical expenses	Rs.15,000/-
Total		Rs.2,15,000/-

By no stretch of imagination, the award passed by the tribunal can be said to be on the higher side.

10. A perusal of the records shows that the main ground in filing C.M.A.No.2007 of 2006 is that when the certified assessor has assessed the damage only as Rs.43,107/-, the tribunal should not have awarded a sum of Rs.1,20,000/- to the second claimant. It is seen from the bills (Ex.P9) adduced by the second claimant that she incurred an expenditure of Rs.1,44,000/- for repairing the car bearing Registration No. TN 28 C 7557 and the tribunal has awarded Rs.1,20,000/- as compensation. Therefore, I do not see any reason to interfere with the findings recorded by the tribunal.

11.In the result,
C.M.A.No.2006 of 2006

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently the connected Miscellaneous Petition is dismissed.

(ii) The orders passed by the tribunal in MCOP.Nos.855 of 2004 is upheld.

(iii) The present appellant, the National Insurance Company Limited is directed to deposit the entire compensation awarded by the tribunal (less the amount already deposited by them) to the credit of M.C.O.P.No. 855 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court 3), Namakkal within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the National Insurance Company, the first claimant is at liberty to withdraw the same, after following due process of law.

C.M.A.No.2007 of 2006

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently the connected Miscellaneous Petition is



dismissed.

(ii) The orders passed by the tribunal in MCOP.Nos.856 of 2004 is upheld.

(iii) The present appellant, the National Insurance Company Limited is directed to deposit the entire compensation awarded by the tribunal (less the amount already deposited by them) to the credit of M.C.O.P.No. 856 of 2004, on the file of the Motor Accidents Claims Tribunal, Additional District Court, (Fast Track Court 3), Namakkal within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the National Insurance Company, the second claimant is at liberty to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accident Tribunal,
The Additional District Court,
Fast Track Court 3,
Namakkal.
2. The Section Officer, VR Section,
High Court, Madras (2 copies)

+1cc to Mr.S.Silambanan, Advocate SR.No.8507

C.M.A.Nos.2006 & 2007 of 2006 and
M.P.No.1 of 2006 in
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RJI (CO)

GMV(10/06/2019)