

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.09.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2797 of 2017

and

C.M.P.No.15976 of 2017

National Insurance Co.Ltd.,
Branch Office, P.B.No.23,
88-F, Bypass Road,
Dharmapuri - 636 701. ... Appellant/2nd Respondent

/Vs/

1. Rajendran
2. K.Murugesan ... Respondents/Petitioners &
1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2005 made in M.C.O.P.No.134 of 2003 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Dharmapuri at Krishnagiri.

For Appellant : Mr.S.Arun Kumar

JUDGMENT

The claimant, Rajendran, aged 40 years, an agriculturist and doing Tamarind Business, earning a sum of Rs.4,000/- per month, met with an accident on 30.07.2002 and he suffered the following injuries;

1. Contusion over the (L) Wrist 5 x 4 c.m. Size
2. Abrasion over (R) knee 5 x 4 c.m.
3. Abrasion over (L) Knee 3 x 3 c.m.
4. Abrasion over (L) Leg 3 x 3 c.m.
5. Abrasion over (L) elbow 3 x 2 c.m.
6. Contusion over (R) arm 6 x 4 c.m.

2. The claimant also suffered multiple injuries all over the body. In respect of the same, he filed claim petition claiming a sum of Rs.4,00,000/- as compensation.

3. The Tribunal, considering the injuries suffered by the claimant, fixed the percentage of disablement at 25%, even though the doctor has certified the disablement as 30% and, accordingly, awarded compensation under the following heads :-

Loss of income for one month	:Rs. 2,500/-
Transport expenses	:Rs. 2,000/-
Extra nourishment	:Rs. 1,000/-
Damages to articles	:Rs. 1,000/-

Medical expenses as per bills :Rs. 10,797/-
Pain and suffering :Rs. 10,000/-
Loss of earnings (adopting
multiplier of 16 Rs.1,20,000/-) :Rs.1,20,000/-

Total :Rs.1,47,297/-

Challenging the award as excessive, the Insurance Company has filed this appeal.

4. Learned counsel appearing for the appellant contended that the tribunal should not have relied upon the evidence of doctor in order to assess the percentage of disablement. It is further submitted that the Tribunal erred in fixing the disability at 25% and the award of a sum of Rs.1,20,000/- towards future loss of income is excessive. It is further submitted that the alleged disability would not affect the earning power and therefore, the award under the head loss of earning capacity is not warranted.

5. In order to appreciate the contentions advanced above, it is necessary to have a perusal of the details of the injuries and the period of treatment undergone by the claimant. It is also to be pointed out that the claimant is said to be an agriculturist and tamarind vendor and whether this disability would affect the earning capacity of the claimant.

6. At the time of accident, the claimant was aged 40 years and he suffered fracture in the wrist bone. Though the Tribunal has fixed the age of the deceased based on the wound certificate, insofar as proof of income is concerned, there being no documentary evidence, the Tribunal fixed the monthly income at Rs.2500/-. Taking into account the injuries sustained by the claimant on the left wrist and also the fracture and the resultant malunion and the restriction in movement of the hand and the difficulty in raising the hand, and based on the evidence of the doctor, who deposed that the claimant would have difficulty in carrying heavy objects and also in discharging the normal responsibilities, the Tribunal has adopted the multiplier method and quantified the loss of earnings at Rs.1,20,000/= by fixing the percentage of disability at 25%. The contention of the appellant that the reliance placed on the evidence of the doctor is erroneous and that the disability suffered by the claimant does not hamper his earning power are totally misconceived. When the medical practitioner has given his opinion on the medical condition of the claimant and the Tribunal having analysed the evidence, both oral and documentary threadbare and has come to a conclusion that there is definitely loss of earning, the contention of the appellant to the contra, without any material cannot be sustained. The said approach of the Tribunal, in the considered opinion of this Court, cannot be

found fault with. The Tribunal has conservatively awarded only a sum of Rs.1,20,000/- under the head loss of earnings.

7. Insofar as the award under the other heads are concerned, a careful perusal of the award reveals that the Tribunal has conservatively awarded compensation, which are just and reasonable and cannot be termed to be excessive.

8. For the reasons aforesaid, there being no merits in the appeal, it is liable to be dismissed. Accordingly, the appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant/Insurance Company is directed to deposit the entire award amount along with interest at 9% per annum from the date of petition till the date of deposit, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant/first respondent through RTGS within a period of two weeks thereafter.

Sd/--

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sms/GLN

To

1.The Motor Accidents Claims Tribunal,
I Additional District Judge, Dharmapuri
Krishnagiri.

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

sm:23.3.2018

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