BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2017
CORAM:
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD)No.1471 of 2016
and
C.M.P(MD)No.12282 of 2016

National Insurance Co. Ltd.,
through its
Divisional Manager,
Office at No.37-C,
S.N.High Road,
Tirunelveli. ... Appellant/ 3rd Respondent

Vs.

1.Gopalakrishnan ... 1st Respondent/ Petitioner

2.Mayandi ... 2nd Respondent/ 1st Respondent

(*)3.Baskaran ... 3rd Respondent/ 2nd Respondent

(3rd Respondent Suo moto impleaded vide court order dated 09.01.2017 made in CMA(MD)No.1471 of 2016 by NKKJ)

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 05.11.2014, made in M.C.O.P.No.540 of 2014, by the Motor Accident Claims Tribunal - cum - Special Sub Court, Tirunelveli.

For Appellant : Mrs.K.R.Shiva Sankari for Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant-Insurance Company against the award of Rs.4,28,760/- (Rupees Four Lakhs Twenty Eight Thousand Seven Hundred and Sixty only) for the partial permanent disability sustained by the first respondent in the accident occurred on 10.05.2014, when he was riding as a pillion rider in the motorcycle bearing Registration No.TN-72-AB-6752 driven by one Mariappan, which was hit by the motorcycle bearing Registration No.TN-72-A-0279 belonging to the first respondent therein/second respondent herein insured with the appellant-Insurance Company. Therefore, the claim petition.

2. On contest, the Tribunal found that because of the rash and negligent driving of the two wheeler belonging to the second respondent herein insured with the appellant-Insurance Company, the accident occurred and based on the evidence of P.W.3 - Doctor, determined the disability at 38% as per Ex.P.6 - Disability Certificate and other records.

3. Since the work of the first respondent/claimant has been affected because of the injury, the Tribunal applied the multiplier method and taking a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month and applying the multiplier '13', the Tribunal awarded a sum of Rs.4,28,760/- (Rupees Four Lakhs Twenty Eight Thousand Seven Hundred and Sixty only).

4. Though Mrs.K.R.Shiva Sankari, learned Counsel appearing on behalf of Mr.S.Srinivasa Raghavan, learned Counsel for the appellant-Insurance Company insisted that the application of multiplier method and the award of Rs.75,000/- (Rupees Seventy Five Thousand only) towards future loss of amenities, are unwarranted, a perusal of the records would show that the first respondent/claimant sustained a fracture of tibia and he was operated and a screw has been fixed, resulting in reduction of length of leg by two inches.

5. Further, P.W.3 - Doctor deposed that because of the reduction of the length of the leg and fixing of the screw, the movement of the leg including folding, is restricted. Further, he deposed that the first respondent herein/claimant cannot sit for a long time and do the mason work and cannot sit properly. For a mason, the hands and legs are very important.

6. The Tribunal, based on the evidence of P.W.3 - Doctor and the medical records and examinations, rightly determined the disability at 38%. Moreover, there was no rebuttal evidence and therefore, the said determination at 38% towards partial permanent disability is confirmed.

7. Since the right leg is affected because of the fracture and subsequent surgery and fixing of a screw, the Tribunal rightly adopted the multiplier method. Therefore, the application of multiplier method for calculating the loss of income cannot be found fault with.

8. Even though a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) taken by the Tribunal as monthly income is very low, at this stage, this Court does not want to increase the same

in the appeal filed by the appellant-Insurance Company. Therefore, a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) taken as monthly income and adoption of multiplier '13' as per the age of the injured, are sustained. The claimant was hospitalized from 10.05.2014 to 19.06.2014 as proved by Ex.P.2. He was in the hospital as inpatient for the past 39 days.

9. Therefore, the amounts awarded under the heads, viz, a sum of Rs.5,000/- (Rupees Five Thousand only) towards attendant charges; a sum of Rs.5,000/- (Rupees Five Thousand only) towards transportation charges; a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards extra nourishment; a sum of Rs.27,000/- (Rupees Twenty Seven Thousand only) towards of loss of income during the treatment period; a sum of Rs.30,000/- (Rupees Thirty Thousand only) towards pain and sufferings and a sum of Rs.2,66,760/- (Rupees Two Lakhs Sixty Six Thousand Seven Hundred and Sixty only) [Rs.4,500/- X 12 X 13 X 38/100] towards loss of income are all reasonable and they are confirmed.

10. Further, a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) awarded towards future loss of amenities is concerned, definitely the claimant sustained loss of amenities and he cannot walk properly due to reduction of length of leg and he cannot fold his leg and stand for a long time, resulting in restriction in movements. Therefore, the Tribunal rightly awarded a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) towards loss of amenities.

11. In the result,

(i) This Civil Miscellaneous Appeal fails and the same is dismissed;

(ii) The first respondent/claimant is entitled to a sum of **Rs.4,28,760/-** (Rupees Four Lakhs Twenty Eight Thousand Seven Hundred and Sixty only) along with interest at the rate of 9% per annum from the date of petition till date of realisation and proportionate costs;

(iii) It is made clear that this judgment passed by this Court is restricted only to the claim of the appellant-Insurance Company;

(iv) Though the learned Counsel for the appellant-Insurance Company sought to reduce the rate of interest from 9% per annum to 7.5% per annum, this Court is not inclined to alter the same as the Tribunal has fixed the very low amount as monthly income of the injured at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month;

(v) The appellant-Insurance Company is directed to transfer the entire award amount along with interest at rate of 9% per annum from the date of petition till date of realisation and proportionate costs to the Personal Savings Bank Account Number of the first respondent herein/claimant through RTGS/NEFT, within a period of **four weeks** from the date of receipt of a copy of this judgment.

(vi) In the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
1.The Motor Accident Claims Tribunal - cum -
Special Sub Court, Tirunelveli.

Copy To: The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.
+1 cc to M/s.S.Srinivasa Raghavan, Advocate in SR.No. 2022

C.M.A(MD)No.1471 of 2016
and C.M.P(MD)No.12282 of 2016
09.01.2017

RSB
CSL/JM/15.02.2017 : 4P/4C