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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. [MD] .No.30 of 2014

The Manager,
M/s.National Insurance Company Limited,
No.63, Rasi Plaza,
West Pradhakshanam Road,
Karur-639 002. : Appellant

Vs.

1.Murugan
2.Dinesh @ Dineshkumar
3.N.Natarajan : Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.113 of 2012, dated 28.02.2013, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Karur.

For Appellant : Mr.J.S.Murali

For Respondent No.1 : Mr.S.Gokularaj

For Respondents 2&3 : No Appearance

J U D G M E N T

[Judgment of the Court was delivered by **R.SUBBIAH, J.**]

This appeal has been filed by the Insurance Company as against the Award dated 28.02.2013, made in M.C.O.P.No.113 of 2012, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Karur.

2. The first respondent in this appeal is the claimant before the Tribunal. The case of the first respondent before the Tribunal is that on 15.07.2010 while he was driving his two wheeler viz., K-Bajaj bike bearing Registration No.TN-58-A-1594, keeping the extreme left hand side of the road, at about 10.30 a.m., another vehicle, viz., Swaraj 735 Tractor bearing Registration No.TN-47-J-8574 came in a rash and negligent manner without observing traffic



rules and regulations and dashed against the first respondent.

3. Due to the sudden impact, the first respondent sustained the following injuries:

1. Fracture proximal Tibia Right side.

2. Knee Dislocation Right

3. Patellar Tendon Avulsion Right

4. Raw Area Right Leg and multiple injuries all over the body."

Immediately, the first respondent was admitted in the Kaveri Medical Centre, Trichy and there, he took treatment from 15.07.2010 to 18.07.2010. Thereafter, he was shifted to Apollo Hospital, Madurai, for better treatment and he was admitted therein as inpatient and took treatment from 18.07.2010 to 18.08.2010 i.e., for a period of 35 days. Hence, the first respondent made a claim for a sum of Rs.25,00,000/- as compensation as against the owner and insurer of the vehicle, for the injuries sustained by him in the accident.

4. The case of the first respondent/claimant was resisted by the Insurance Company before the Tribunal by filing a detailed counter-affidavit stating that the injuries sustained by the first respondent were not caused by the impact of Tractor bearing Registration No.TN-47-J-8574 and he sustained injuries due to his own negligence and hence, the Insurance Company is not liable to pay compensation. That apart, the Insurance Company has also taken a specific defence that the second respondent herein, who was the driver of the Tractor bearing Registration No.TN-47-J-8574, was a minor and he did not possess driving licence at the time of accident. The act of the third respondent in allowing the second respondent, who is a minor, to drive his vehicle, is in violation of policy terms. Thus, the Insurance Company is not liable to pay compensation to the first respondent.

5. In order to prove the claim, on the side of the first respondent/claimant, the claimant himself was examined as P.W.1, besides examining one Dr.Selvaraj as P.W.2 and 11 documents were marked as Exs.P.1 to P.11. On the side of the appellant Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and five documents were marked as Exs.R.1 to R.5.

6. The Tribunal, after analyzing the entire evidence, has passed an award for a total sum of Rs.17,79,140/-. Since there is violation of policy terms, the Tribunal has permitted the appellant Insurance Company to recover the compensation amount from the third respondent herein, the owner of the vehicle which caused the accident in question, after paying the same to the first respondent/claimant.



7. Now, the present appeal has been filed by the Insurance Company questioning the quantum of compensation awarded by the Tribunal.

8. The learned counsel for the appellant submitted that the present appeal has been filed mainly questioning the quantum of compensation awarded by the Tribunal. In this regard, it is the submission of the learned counsel for the appellant that even as per the evidence available on record, the disability suffered by the claimant is only a partial permanent disability. When it is a partial permanent disability, the Tribunal ought to have awarded the amount only based on the percentage of disability suffered by the victim. But, on the other hand, the Tribunal, by fixing Rs.7,000/- as monthly income and by applying the multiplier '17', and after deducting one third amount towards his personal expenses, has awarded a sum of Rs.9,52,000/- under the head of permanent disability, which is so exorbitant and hence, it needs proper modification. The learned counsel has also submitted that the amount awarded under the other heads is also on the higher side. Therefore, the same also needs proper reduction.

9. Countering the submission made by the learned counsel for the appellant, the learned counsel for the first respondent has contended that the first respondent was working as Commercial Executive Engineer in M/s.Linkwell Telesystems (P) Limited, Begumpet, Hyderabad and he was earning a sum of Rs.11,490/- per month. In order to prove the same, the Salary Certificate was produced and the same was marked as Ex.P.9. However, the Tribunal has taken only a sum of Rs.7,000/- as monthly income for making calculation under the head of permanent disability, taking into account the nature of injury sustained by the victim in the accident and due to that, the first respondent's right leg was shortened by 5 cm, which is evident from the evidence of P.W.2-Dr.Selvaraj. Because of injury, he was not in a position to carry on his normal avocation, as he was doing before the accident. Since the first respondent cannot carry on his normal avocation, for the rest of his life, the amount awarded under the head of permanent disability needs no reduction. The amount awarded under the other heads is also just and reasonable, which is not liable to be interfered with.

10. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record.

11. As contended by the learned counsel for the first respondent, we find from the evidence of P.W.2-Dr.Selvaraj, on account of the injury sustained in the accident that had occurred on 15.07.2010, the first respondent's right leg was shortened by 5 cm and on account of that, he cannot carry on his normal avocation as he had done earlier. Therefore, considering this aspect, the Tribunal awarded the compensation under the head of permanent

disability by adopting the multiplier method, in which, we find no infirmity. But, at the same time, considering the nature of disability and its consequential effect, the amount awarded under the head of permanent disability is on the higher side, which needs little interference by this Court. Hence, by fixing a sum of Rs.6,000/- as monthly income and by adopting the multiplier '17', if the calculation is made by deducting one third amount towards his personal expenses, the amount under the head of permanent disability comes to Rs.8,16,000/- [$\text{Rs.6,000} \times 12 = \text{Rs.72,000}$ $\times \frac{1}{3} = \text{Rs.48,000}$ $\times 17 = \text{Rs.8,16,000/-}$]. Hence, a sum of Rs.9,52,000/- awarded by the Tribunal under the head of permanent disability is reduced to Rs.8,16,000/-. In respect of the amount awarded under the head of pain and suffering, transport expenses, extra-nourishment, in our considered view, there is no need to reduce the amount further. Considering the nature of injury sustained by the first respondent and the expenses occurred during treatment, the amount awarded under the head of medical expenses is reduced to Rs.7,65,500/- from Rs.7,65,640/-. Apart from that, considering the fact that the first respondent has taken treatment as an inpatient, this Court awards a sum of Rs.7,000/- towards attendant charges. Thus, the amount of compensation awarded by the Tribunal is reduced to Rs.16,50,000/- from Rs.17,79,140/-. The finding of the Tribunal with regard to pay and recovery is confirmed.

12. Considering all these aspects, the award of the Tribunal is modified as follows:

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	For permanent disability	Rs. 9,52,000/-	Rs.8,16,000/-
2	For pain and suffering	Rs. 20,000/-	Rs. 20,000/-
3	For medical expenses	Rs. 7,65,640/-	Rs.7,65,500/-
4	For transport expenses	Rs. 31,500/-	Rs. 31,500/-
5	For extra-nourishment	Rs. 10,000/-	Rs. 10,000/-
6	For attendant charges	-----	Rs. 7,000/-
	TOTAL	Rs.17,79,140/-	Rs.16,50,000/-

13. In the result, the Civil Miscellaneous Appeal is allowed in part in the following terms:-

<https://hcservices.ecourts.gov.in/hcservices/>

(i) The Award of the Tribunal is reduced to Rs.16,50,000/-

from Rs.17,79,140/-.

(ii) The appellant Insurance Company is directed to deposit the entire award amount as modified above, with proportionate interest at the rate of 7.5% per annum and costs, after deducting the amount that has already been deposited by them, within a period of four weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the first respondent/claimant is permitted to withdraw the entire amount, less the amount already withdrawn, with proportionate interest and costs.

(iv) In all other aspects, the award of the Tribunal is confirmed.

(v) There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Karur.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.GOKULRAJ, Advocate, SR No. 5662

+1 CC to M/s.J.S.MURALI, Advocate, SR No. 5612

SML

PSM/SV-MMS/27.02.2017/5P/5C

Judgment made in
C.M.A.[MD].No.30 of 2014
Dated: 01.02.2017