



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD) No.728 of 2014

and

M.P. (MD) .No.1 of 2014

The National Insurance Company Limited
No.63, Rasi Plaza,
West Pradakshanam Road,
Karur.

... Appellant/Respondent-2

Vs.

1.Pichaiammal
2.S.Palanichamy

... Respondent/Petitioner
... Respondent/Respondent-1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decreetal order dated 01.12.2011 made in M.C.O.P.No.191 of 2007 on the file of Motor Accidents Claims Tribunal (Sub Court), Kulithalai.

For Appellant	: Mrs.KR.Sivashankari for Mr.S.Srinivasa Raghavan
For R1	: Mr.G.Kandavadivelan
For R2	: No appearance

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the National Insurance Company, against the fair and decreetal order dated 01.12.2011 made in M.C.O.P.No.191 of 2007 on the file of Motor Accidents Claims Tribunal (Sub Court), Kulithalai.

2. The brief facts of the case is as follows:

It is a case of injury took place on 15.01.2007 at about 2.00 p.m., when the first respondent Pichaiammal was boarding into the bus bearing Registration No.TN 47 M 4900, to go to Lalapettai and was getting into the bus, the driver of the bus suddenly and negligently moved the bus and hence, she fell down from the bus. As a result of which, Pichaiammal sustained grievous injuries all over the body. Immediately, she was admitted in Government Hospital, Karur and thereafter, taking treatment in private hospital. Hence, she filed an application in M.C.O.P.No.191 of 2007 on the file of the Motor Accidents Claims Tribunal (Sub Court), Kulithalai, seeking compensation of Rs.5,00,000/-.

3. Before the Tribunal, on the side of the claimant, two P.Ws.1 and 2 were examined and nine documents viz., Exs.P1 to P9 were marked. On the side of the respondents, no witness was examined and no document was marked.



4. On a careful consideration of the evidence on record, the Tribunal has awarded a sum of Rs.1,75,000/- as compensation with interest at the rate of 7.5%. Challenging the quantum of compensation, the National Insurance Company Limited filed the present appeal.

5. The learned counsel for the appellant/Insurance Company would submit that the quantum of compensation awarded on the ground of partial permanent disability is liable to be reduced. He would further submit that the nature of injuries suffered by the injured claimant has not resulted in total disablement.

6. The learned counsel for the first respondent would submit that the first respondent sustained injuries and she was treated by P.W.2, Doctor, who examined her and gave the disability certificate under Ex.P.8. On the basis of Ex.P8, the disability is assessed at 38%. But the Tribunal has taken 20% disability.

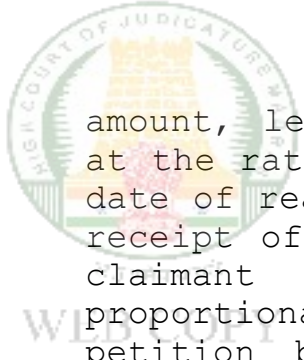
7. Heard both sides.

8. Though the learned counsel for the petitioner submitted that for 20% disability, the learned Judge has adopted a multiplier method and granted Rs.1,26,000/- for future loss of income, there is no finding given by the learned Judge as to how he has differed from the disability certificate issued by the Doctor, which was 38% to 20%. In my considered opinion, the ends of justice could be made by applying the judgment reported in 2013 (2) TN MAC 583 (NATIONAL INSURANCE Co. Ltd., v. G.RAMESH), wherein for 1% of disability, Rs.3,000/- (Rupees Three Thousand Only) is awarded and therefore, for 38% disability, it works out to (Rs.38 X 3000) Rs.1,14,000/- is awarded and the amount of Rs.1,26,000/- granted towards disability is reduced to Rs.1,14,000/-.

9. The learned counsel for the first respondent/injured claimant submitted that the Tribunal has not awarded any amount for loss of amenities and therefore, a sum of Rs.12,000/- is granted for loss of amenities.

10. Regarding loss of income (for 2 months), the Tribunal has awarded a sum of Rs.9,000/-; awarded a sum of Rs.20,000/- for Medical, Transport and for extra nourishment and awarded a sum of Rs.20,000/- for pain and sufferings which are reasonable and so they are confirmed.

11. With the above modification, the Civil Miscellaneous Appeal is partly allowed. Thus, the first respondent/injured claimant is entitled to the award amount of Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only). The appellant / National India Assurance Company is directed to deposit the entire award



amount, less the amount already deposited, with accrued interest at the rate of 7.5% per annum, from the date of petition till the date of realization, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the award amount with proportionate interest and costs, without filing any formal petition before the Court below. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Sub Judge,
Motor Accidents Claims Tribunal,
Kulithalai.
2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.SRINIVASA RAGHAVAN, Advocate SR.No. 80322
+1cc to M/S.G.KANDHA VADIVELAN, Advocate SR.No. 80009

C.M.A. (MD) No. 728 of 2014
20.09.2017

akv

JM/JC/SAR 1/28.12.2017/3P/5C