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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.09.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.2750 of 2006

and

M.P.No.2 of 2006

The New India Assurance Co.Ltd.,  
Kumaran Road,  
Tiruppur.

... Appellant/2<sup>nd</sup> Respondent

Versus

1.Sivakumar

... 1<sup>st</sup> Respondent/Petitioner

2.Ramamoorthy

... 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Award and Decree dated 14.10.2004 made in M.C.O.P.No.204 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.V), Tiruppur.

For Appellant : Mr.M.Krishnamoorthy

For 1<sup>st</sup> Respondent: Mrs.Ra.Srividhya

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Award and Decree dated 14.10.2004 made in M.C.O.P.No.204 of 2003 on the file of the Motor Accident Claims Tribunal (Additional District Court, Fast Track Court No.V), Tiruppur.

2. The brief facts of the case are as follows:-



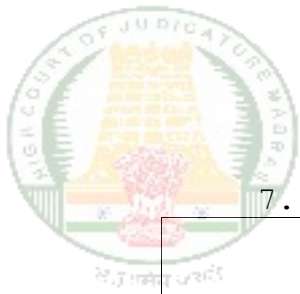
On 15.12.2002 at about 15.30 hours, the claimant was travelling in a two wheeler bearing Registration No.TN-39-R-8003, at that time, a Mini Door vehicle bearing registration No.TN-39-P-6064 came in a rash and negligent manner, hit against the claimant and caused severe injuries. The claimant has claimed a sum of Rs.5,00,000/- as compensation.

3. The Tribunal, after analyzing the evidence and documents placed before it, has awarded a sum of Rs.4,69,707/- as compensation. Aggrieved against the same, the appellant/Insurance Company has preferred this Appeal.

4. In the grounds of appeal, it is stated by the appellant that the disability taken by the Tribunal is on the higher side and the sum awarded for loss of income. By taking the income of the claimant is also on the higher side and also after awarding the huge sum of loss of income, further amount awarded for permanent disability was all not properly justified.

5. Heard both sides and perused the materials available on records.

6. On a perusal of the records, it is observed that the claimant was aged about 36 years at the time of the accident and his monthly income has stated as Rs.5,000/-. It is also observed that the Doctor has given a certificate that the claimant has sustained at 45% disability, the Tribunal has also accepted the same. By considering the age, the Tribunal has fixed the monthly income of the claimant as Rs.4,000/- and arrived the loss of income at Rs.3,45,600/-. It is argued by the appellant that in the absence of any income proof filed by the claimant, the income taken by the tribunal is on the higher side. It is argued by the appellant that since already a huge sum has been awarded by the Tribunal under the head loss of income by applying the multiplier method, awarding additional sum by the Tribunal under the head 'disability' at Rs.45,000/- is not proper. It is observed that the Tribunal has not considered the loss of maintenance and loss of income for the claimant when he was under treatment for sometime. Hence, this Court of the view that annual income arrived by the Tribunal by fixing Rs.4,000/-, as monthly income needs to be reduced and accordingly the monthly income of the claimant is taken as Rs.3,000/- and the loss of income is calculated as Rs.2,43,000/- and by considering the loss of income for the period of treatment undergone by the claimant. This Court inclined to enhance the amount awarded under the head pain and suffering. Accordingly this courts enhances the amount from Rs.7,000/- to 20,000/- under the head pain and suffering.



7. This Court modifies the award as follows :

| Heads                                                                    | Amount awarded by the Tribunal (Rs.) | Amount reduced by this Court (Rs.) |
|--------------------------------------------------------------------------|--------------------------------------|------------------------------------|
| For Loss of Income<br>(Rs.4,000*12*16*45/100)<br>(Rs.3,000*12*15*45/100) | 3,45,600.00                          | 2,43,000.00                        |
| For Pain and Suffering                                                   | 7,000.00                             | 20,000.00                          |
| For nourishment                                                          | 2,000.00                             | 2,000.00                           |
| For disability                                                           | 45,000.00                            | 45,000.00                          |
| For Medical Expenses                                                     | 70,707.00                            | 70,707.00                          |
| Total compensation                                                       | 4,69,707.00                          | 3,80,707.00                        |

8. In view of the above the said modification, the total sum awarded by the Tribunal has been reduced to Rs.3,80,707/-.

9. It is represented by the learned counsel for the appellant/Insurance Company that the entire award amount has already been deposited and the 1<sup>st</sup> respondent/claimant had already withdrawn 50% of the amount. Hence, The claimant is permitted to withdraw the balance amount as fixed by this Court in this Appeal. The appellant/Insurance Company is permitted to withdraw the excess amount, if any, deposited by them.

10. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

lpp

To

1. The Motor Accident Claims Tribunal  
(Additional District Court, Fast Track Court No.V),  
Tiruppur.



2. The Section Officer,  
V.R.Section,  
High Court,  
Madras.

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+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.65617

+1cc to Mr.S.S.Swaminatha, Advocate SR.No.65624

CMA.No.2750 of 2006  
and  
M.P.No.2 of 2006

RSI (CO)  
GMY (21/03/2019)