

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.1889 of 2018 and
C.M.P.No.14542 of 2018

Branch Manager,
M/s. National Insurance Co.Ltd.,
No.33, Bharathi Dasan Road,
Contonment, Trichy - 1. Appellant/2nd Respondent

-vs-

1.Muthukrishnan

2.Vallikannu Respondents/Claimant/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 12.10.2017 and made in M.C.O.P.No.402/2012 on the file of the Motor Accident Claims Tribunal, (Principal District Court) Perambalur.

For Appellant : Mr.S.Vadivel
For Respondents: Mr.T.Gobinath for R1 Caveator

J U D G M E N T

[Judgment of the Court was made by
R.SUBRAMANIAN,J.]

The Insurance Company is on appeal challenging the quantum of compensation fixed at Rs.14,20,421/- to the first respondent for the injuries suffered by him in the motor accident, which occurred on 31.08.2010.

2. Mr.S.Vadivel learned counsel for the appellant Insurance Company would submit that there is no dispute on the ground of negligence. However, on the quantum, the learned counsel would submit that the percentage of disability assessed by the Doctor as well as the Tribunal are on the higher side. Inasmuch as there was no functional disability, the Tribunal should not have adopted the multiplier method.

3. We are afraid that the said submission of the learned counsel cannot be accepted for the reason that the nature of the injuries suffered by the injured shows that there was fracture in the hip bone as well as in the right elbow, which

has reduced the movement of the right elbow to the extent of 30%, which would definitely have a bearing on the earning capacity of the injured.

4. On a perusal of the discharge summary marked as Ex.R2, we are of the considered opinion that the functional disability could be fixed at 50% instead of 53% as fixed by the Tribunal. The Tribunal has taken the monthly income of the injured as 13,618/-. While doing so, no deduction has been made towards income tax. The Tribunal has also not added any amount towards future prospects.

5. Considering all the above aspects, we are of the opinion that the monthly income can be fixed at Rs.10,000/- and adding future prospects at 40%, as per the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Pranay Sethi and others [2017 (2) TN MAC 609 (SC)], the monthly income is fixed at Rs.14,000/-. The injured was aged 36 years. Therefore, "15" multiplier should be adopted. Thus, calculated with functional disability at 50%, the pecuniary loss would be Rs.12,60,000/-.

6. The Tribunal has awarded a sum of Rs.77,880/- towards medical expenses; Rs.18,384/- for damage to the vehicle, Rs.20,000/- for Pain and Suffering and Rs.5,000/- for Nutrition. These heads are sustained.

7. In the result, the Civil Miscellaneous Appeal is partly allowed:-

i) The compensation is fixed at Rs.13,81,264/- which is rounded off to Rs.13,80,000/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit with proportionate costs.

(iii) The appellant - Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the claimant is permitted to withdraw the amount deposited by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

svki

To
Motor Accident Claims Tribunal,
(Principal District Judge) Perambalur.

+1cc to Mr.S.Vadivel, Advocate SR.NO.58887
+1cc to Mr.T.Gobinath, Advocate SR.NO.58948

SSI (CO)
sm:26.9.2018

CMA No.1889 of 2018



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