

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2290 of 2007

and M.P.No.1 of 2007

M/s.National Insurance Co., Ltd.,
T.V.S.Street, Erode 638 011. ... Appellant/3rd Respondent

Vs.

1.R.Kumar 1st Respondent/Petitioner
2.N.Senthil
3.T.Bhaskaran ... Respondents 2 & 3/
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the award and decree dated 10.10.2006 made in M.C.O.P.No.197 of 2004 on the file of the Motor Accident Claims Tribunal, (Additional District Judge) Gobichettipalayam.

For Appellant : Mr.S.Arunkumar

For 1st Respondent : Mr. Ma.Pa.Thangavel

JUDGMENT

The appellant-insurance company is aggrieved by the impugned fair and decretal order dated 10.10.2006 passed by the Motor Accidents Claims Tribunal, Additional District Judge Gobichettipalayam in M.C.O.P.No.197 of 2004.

2. The case of the claimant/1st -respondent was that a mini door auto belonging to the 2nd respondent was driven rashly and negligently without observing the rules and hit the motor cycle on 09.10.2002 and caused injury to two pillion riders. The 1st respondent-claimant was one of the pillion riders on the bike and suffered a fracture on his little finger. The 1st respondent filed a claim petition on 07.11.2002 under Section 166 of the Motor Vehicles Act, 1988 for a sum of Rs.2,50,000/- on various heads.

3. An amount of Rs.81,840/-was awarded to the 1st respondent from the date of claim petition till the date of realization at 7.5% per annum vide in the impugned order.

4. The Tribunal has awarded a sum of Rs. 51,840/-towards loss of income on account of permanent disability apart from awarding a sum of Rs.30,000/- towards pain and suffering.

5. The learned counsel for the appellant/insurance company submits that this was not a fit case for adopting multiplier method for a minor injury in the nature of fracture to the little finger on the right hand .

6. Per contra, the learned counsel for the 1st respondent-claimant mentioned that due to the accident, there was mal-union in the right hand finger for which the appellant/insurance company has to pay the compensation and therefore the 1st Respondent-claimant was entitled for the compensation awarded. The learned counsel relied on the latest ruling of the Hon'ble Supreme Court in Laxmidhar Nayak and Others vs. Jugal Kishore Behera and Others 2018(1) SCC 746 and another decision in Rajkumar vs Ajay Kumar 2011(1) SCC 343. He also relied on the decision of the Hon'ble Supreme Court in Ankur Kapoor vs Oriental Insurance Company Ltd., 2018(1) SCC 136.

7. After considering the submissions of the learned counsel for the appellant and the respondent, the amount awarded by the Tribunal towards loss of income is not reasoned and does not answer to the decision of the Hon'ble Supreme Court in Raj Kumar vs Ajay Kumar 2011 (1) SCC 343. It is also noticed that the Tribunal has not considered other conventional heads of compensation while awarding the compensation except towards pain and suffering for an amount of Rs.30,000/- apart from Rs.51,840/- towards loss of income on account of permanent disability.

8. The decision of the Supreme Court cited by the learned counsel in Laxmidhar Nayak, 2018(1) SCC 746 is not relevant as it was rendered in the context of fatal accident. Therefore, the prayer for enhancement of the compensation on the strength of the above Judgment at the request of the respondent No.1 cannot be considered.

9. At the same time, there is no point in remanding this case back to the Tribunal now after a lapse of sixteen years of the accident. Therefore, considering the fact that the claimant would have been entitled to compensation on the other conventional heads which has not been awarded and considering the fact that the total amount awarded is only Rs. 81,840/-, the amount already awarded is treated as the amount awarded towards conventional heads of compensation that are available to an injured claimant including the loss on account of the injury suffered by the 1st respondent. Accordingly, the amount

awarded by the Tribunal is upheld. The rate of interest granted by the Tribunal is also confirmed. The appellant/insurance company is directed to deposit a sum of Rs. 81,840/-, awarded by the Tribunal. On such deposit, the 1st respondent is permitted to withdraw the award amount together with interest accrued thereon after adjusting the amount already withdrawn.

10. In the result, the Civil Miscellaneous Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No cost.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
(Additional District Judge) Gobichettipalayam.

+1 CC to Mr.S.ARUNKUMAR, Advocate SR.NO.53859

+1 CC to Mr.MA.P.THANGAVEL, Advocate SR.NO.54701

Judgment in
C.M.A.No.2290 of 2007
and M.P.No.1 of 2007
03.08.2018

GN(16.11.2018)

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