



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.333 of 2018

and

CMP(MD)Nos.4535 and 4536 of 2018

National Insurance Co.Ltd.,
Through its Branch Manager, Karaikudi,
V.O.C. Road,
Karaikudi Town,
Sivagangai District.

... Appellant/2nd Respondent

vs.

1)Karu.Seenivasan

...1st Respondent/Claimant

2)Ka.Alagiah

... 2nd Respondent/ 1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 10.11.2016 made in M.C.O.P.No.48/2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.B.Muruganadam

JUDGMENT

This appeal has been filed against the decree and judgment dated 10.11.2016 made in M.C.O.P.No.48/2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

2.In an accident which occurred on 25.01.2011, the 1st respondent/claimant sustained injuries on head, forehead and right leg. He made a claim in M.C.O.P.No.48/2012 on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai, claiming compensation of Rs.8,00,000/-. Resisting the claim petition, the appellant filed counter denying the manner of accident. They also disputed the age, avocation, income and the injuries sustained by the 1st respondent. Considering the oral and documentary evidence adduced on either side, the Tribunal awarded compensation of Rs.9,90,981/- with 7.5% per annum from the date of claim. Aggrieved by the said award, the appellant has filed this appeal challenging quantum of compensation.



3. Perusal of record shows that the 1st respondent sustained injury in the head, due to which, there was a blood clot and that was cured by surgery. PW3 Doctor who examined the claimant deposed that the head injuries suffered by the claimant are grievous in nature, due to which, the claimant would experience headache, dizziness, fits on left hand and left leg and deafness of right ear. He has assessed the disability suffered by the claimant at 40% and issued Ex.P17-disability certificate. The claimant was aged 70 years at the time of accident. Considering the nature of injuries and the evidence of PW3 Doctor, the Tribunal awarded Rs.80,000/- towards partial permanent disability, by awarding Rs.2,000/- for each percentage of disability. Apart from the above, the Tribunal awarded Rs.14,000/- for transportation, Rs.6,91,981/- towards medical bills, Rs.10,000/- towards nutrition, Rs.15,000/- towards pain and suffering, and Rs.1,80,000/- towards loss of income for three years. Altogether, the Tribunal awarded Rs.9,90,981/- as compensation with 7.5% interest per annum from the date of claim.

4. As per the judgment of this Court in *National Insurance Company Limited vs. G.Ramesh*, reported in 2013 (2) TN MAC 583, this Court is inclined to award Rs.1,20,000/- (3000x40) towards partial permanent disability, by awarding Rs.3,000/- for each percentage of disability. Accordingly, the award of the Tribunal towards partial permanent disability is enhanced to Rs.1,20,000/- from Rs.80,000/-.

5. As regards the claim towards medical bills, the claimant has marked Ex.P8 for Rs.1,93,390/-, Ex.P10 for Rs.1,71,700/-, and Ex.P16 for Rs.2,40,000/-, totally Rs.6,91,981/- and the Tribunal awarded the said sum. It is the grievance of the learned counsel for the appellant that medical bills under Ex.P16 for Rs.2,40,000/- is only an advance amount paid to the hospital and the same was adjusted and therefore, the amount under Ex.P16 need not be granted. Learned counsel for the 1st respondent/claimant also agreed to forego the amount under Ex.P16. In view of the same, the award of Rs.6,91,981/- towards medical expenses by the Tribunal is hereby reduced to Rs.4,51,981/- deducting the amount under Ex.P16. Considering the nature of injuries, the award of Rs.15,000/- towards pain and suffering is enhanced to Rs.50,000/- and a sum of Rs.10,000/- is hereby awarded towards attendant charges. Due to the injuries in the head, the claimant was suffering from severe headache and he was unable to do his work as before the accident. Therefore, a sum of Rs.30,000/- is hereby awarded towards loss of amenities. Except the above, the award under other heads stands confirmed. The total compensation is modified and apportioned as hereunder:-



Partial permanent disability	=	Rs.1,20,000/-
Medical expenses	=	Rs.4,51,981/-
Pain and suffering	=	Rs. 50,000/-
Loss of income for 3 years	=	Rs.1,80,000/-
Loss of amenities	=	Rs. 30,000/-
Attendant charges	=	Rs. 10,000/-
Nutrition	=	Rs. 10,000/-
Transportation	=	Rs. 14,000/-

Total	=	Rs.8,65,981/-
(Less) Amount awarded by the Tribunal	=	Rs.9,90,981/-

Reduction	=	(-)Rs.1,25,000/-

6. There is a reduction of Rs.1,25,000/- on the quantum of compensation. Accordingly, the 1st respondent/claimant is entitled to compensation of Rs.8,65,981/- with 7.5% interest per annum from the date of claim till the date of deposit. It is stated by the learned counsel for the appellant that the entire award amount with interest has already been deposited to the credit of the claim petition. The 1st respondent/claimant is permitted to withdraw the modified compensation of Rs.8,65,981/- with proportionate interest along with proportionate bank interest from the date of deposit, without filing any formal petition before the Tribunal. In view of the reduction on the quantum, the appellant is entitled to refund of the amount more than that of Rs.8,65,981/- now determined by this Court with proportionate interest along with proportionate bank interest from the date of deposit. Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
The Subordinate Judge,
Motor Accident Claims Tribunal,
Devakottai.

+1cc to Mr.A.S.Mathialagan, Advocate Sr.No.74078

+1cc to Mr.B.Muruganadam, Advocate Sr.No.73965

BALA

VB/RP/SAR4/21.08.2018/3P/4C