



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A. (MD)No.1348 of 2013

and

Cross Obj. (MD) .No.11 of 2015

and

M.P. (MD) .No.1 of 2013

in

C.M.A. (MD) .No.1348 of 2013

The Oriental Insurance Company Limited,
Branch Office,
D.D.J. Centre, 1st Floor,
Opposite to Vadaseri Bus Stand,
Nagercoil Village,
Agastheeswaram Taluk,
Kanyakumari District.

... Appellant/ 1st respondent in
Cross Objection/2nd respondent in MCOP

Vs.

1.V.Josline Thambiraj

... 1st respondent in the appeal/
Cross Objector/Claimant

2.T.Kanagaraj

... 2nd respondent in the appeal/
2nd respondent in the cross objection/
1st respondent in MCOP

PRAYER: Appeal and Cross Objection have been filed under Section 173 of the Motor Vehicles Act, 1988 and under Order 41 Rule 22 C.P.C.respectively, against the award, dated 22.08.2012, made in M.C.O.P.No.17 of 2010 by the Ist Additional Motor Accident Claims Tribunal / Special Judge for Forest Offence cases, Nagercoil.

For appellant/
1st respondent in
cross objection

: Mr.K.Baskaran

For 1st respondent /
Cross Objector

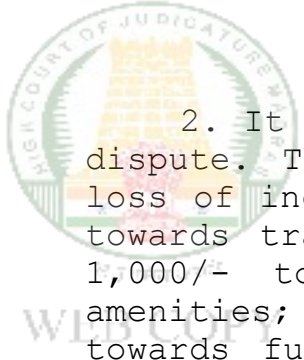
: Mr.H.Thayumanaswamy

For 2nd respondent in
both the cases

: No appearance

COMMON JUDGMENT

Heard the learned counsel appearing for both sides and perused the records carefully.



2. It is a case of injury. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.4,68,000/- towards loss of income; Rs.4,00,000/- towards medical expenses; Rs.10,000/- towards transportation; Rs.15,000/- towards extra nourishment; Rs.1,000/- towards damage to cloth; Rs.50,000/- towards loss of amenities; Rs.50,000/- towards pain and sufferings and Rs.50,000/- towards future medical expenses and thus, totally, a sum of Rs.10,44,000/- awarded as compensation by the Tribunal and the same was directed to be paid by the owner of the vehicle and the Insurance Company with 7.5% interest from the date of petition till the date of deposit.

3.The appellant / Insurance Company has filed the Civil Miscellaneous Appeal seeking to reduce award amount on the ground that for the disability of 40%, the Tribunal ought not to have adopted multiplier method and that the Tribunal ought to have awarded Rs.2,000/- per percentage of disability.

4.The first respondent / Cross Objector / claimant has filed the cross objection seeking to enhance the compensation on the ground that as the claimant has sustained total disablement, the Tribunal ought to have assessed the permanent disablement of the claimant as 85% instead of 40% and accordingly, ought to have awarded higher compensation.

5. The date of the accident is on 08.09.2008. At the time of the accident, the age of the claimant was 48 years. In the accident, the claimant has sustained fracture in the right leg; crushed injury measuring 5 x 0.5 x 0.5 cm in the middle of 4th and 5th finger of the right hand; abrasions measuring 2 x 2 cm in the right arm and contusions over left foot, right thigh and right shoulder. It is seen from the record that the claimant has undergone several surgeries for the injuries sustained in the accident. PW3 - Dr.Mohandass, who gave treatment to the claimant, has stated in his evidence that the strength, movement and length of the right leg of the claimant have been reduced and he could not able to walk freely and therefore, he has assessed the permanent disability of the claimant as 40%. Since the petitioner's movement is restrained by the disability, he could not continue his avocation. In view of the above, the Tribunal has adopted multiplier method for arriving at loss of income due to disability. This Court does not find any reason to interfere with the same.

6. So far as the contention of the claimant is concerned, PW3 - Dr.Mohandass, who gave treatment to the claimant, has categorically stated in his evidence that the claimant has sustained 40% permanent disability and he has also issued disability certificate - Ex.P13 to that effect. Though the claimant has stated that the Tribunal ought to have taken the disability of the claimant as 85% considering the disablement of the claimant, he has not produced any oral and documentary evidence in order to substantiate



his claim. Considering the evidence of PW3 and Ex.P13 - disability certificate, the Tribunal has rightly fixed 40% of permanent disability and the same does not warrant any interference at the hands of this Court.

7. In view of the above, both the appeal and cross objection are dismissed. The appellant / Insurance Company is directed to deposit the entire award amount, less the amount already deposited, with accrued interest and costs from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment and on such deposit being made, the claimant is permitted to withdraw the entire award amount with accrued interest and costs by filing a petition before the Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Special Judge for Forest Offence cases
1st Additional Motor Accident Claims Tribunal /
Nagercoil.

Copy to

The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Baskaran, Advocate Sr.No.76166
+1cc to Mr.H.Thayumanaswamy, Advocate Sr.No.75986

GCG

VB/RP/SAR4/18.09.2018/3P/6C

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