

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1712 of 2009

and

M.P.No.1 of 2009

M/s.National Insurance Co.Ltd,
rep by its Branch Manager
Div.No.10, Flat.101-106,
N-1 B.M.C House,
Connaught Place,
New Delhi. ... Appellant/2nd Respondent

Vs.

1.Arukutty ... 1st Respondent/Claimant
2.Mohameed Kaif ... 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.08.2008 made in M.C.O.P.No.113 of 2007 on the file of the Motor Accident Claims Tribunal, (Fast Track Court No.IV), Tiruppur, Additional District Judge, Coimbatore.

For Appellant : Mr.J.Chandran
For R1 : Mr.S.S.Swaminathan
For R2 : No Appearance

J U D G M E N T

This appeal is preferred by the Insurance Company against the award of a sum of Rs.5,57,860/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On the fateful day, ie. on 04.11.2006, the first respondent was riding his motorcycle bearing Reg.No.TN-40-Y-2547 from East to West direction in the N.H.47 Road, near New Bus Stand, Avinasi. At 14.00 hours on that day, the car bearing Reg.No.KA-03-MF-4183 belonging to the second respondent, driven by its driver in a rash and negligent manner, came from the West to East direction and dashed against the motorcycle. Due to the said impact, the first

respondent sustained multiple grievous injuries. The first respondent / claimant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.5,57,860/- with interest at the rate of 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

3.The learned counsel for the appellant-Insurance Company has disputed only the quantum of compensation awarded by the Tribunal. According to him, the Tribunal has erred in fixing the monthly income of the first respondent at Rs.7,000/- without any basis and hence, the same has to be reduced.

4.The learned counsel for the first respondent / claimant has submitted that the Tribunal has considered all the materials and evidence available on record and has rightly awarded the compensation which is just, fair and reasonable, and hence the judgment of the Tribunal need not be interfered with by this Court.

5.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

6.Since the learned counsel for the appellant has not disputed the manner in which the accident took place, the finding of the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the car, need not be interfered with by this Court.

7.With regard to the quantum of compensation, even though it was claimed by the first respondent that he was earning a sum of Rs.8,000/- per month as Power Loom Operator, since there was no documentary evidence to that effect, the Tribunal has fixed the monthly income of the claimant at Rs.7,000/-, adopted the multiplier of 13 and arrived at the sum of Rs.3,27,600/- towards loss of future earning capacity for 30% disability. The accident took place in the year 2006. Considering the materials and evidence available on record, this Court is of the view that the monthly income of the first respondent fixed by the Tribunal is excessive and it would be appropriate to reduce the same to Rs.5,000/-. If that is done, the loss of future earning capacity towards 30% disability works out to Rs.2,34,000/-. Thus, the amount awarded by the Tribunal towards 'Loss of Future Earning Capacity' stands modified to Rs.2,34,000/-. The amounts awarded by the Tribunal at Rs.2,16,760/- towards future

medical expenses, Rs.3,300/- towards transport expenses, Rs.5,000/- towards extra nourishment, Rs.200/- towards damage to clothes / articles and Rs.5,000/- towards pain and suffering, are confirmed.

8.In the result, the compensation awarded by the Tribunal at Rs.5,57,860/- with interest at the rate of 7.5% per annum from the date of petition, stands reduced to Rs.4,64,260/- with interest at the rate of 7.5% per annum from the date of petition.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. The appellant / Insurance Company is directed to deposit the modified compensation of Rs.4,64,260/- with interest at the rate of 7.5% per annum from the date of petition along with interest and costs, less the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent /claimant is permitted to withdraw the same on making proper application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The Additional District Judge, FTC.IV,
Motor Accident Claims Tribunal,
Tiruppur, Coimbatore.

Copy to:

The Section Officer, VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.71513

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.70728

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SV(CO)

CB(22/07/2020)