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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2019

Pronounced on : 26.03.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2224 of 2011

and

MP.No.1 of 2011

Branch Manager

United India Insurance Co., Ltd.,

Arobind Salai, Block No.19,

Neyveli - 607 803.

... Appellant/3rd Respondent

Versus

1.Murugesan

..1st Respondent/Petitioner

2.Senthilkumar

..2nd Respondent/1st Respondent

3.Arokiasamy

.. 3rd Respondent/2nd Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.10.2010 made in M.C.O.P.No.273 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal.

For Appellant : Mr. S. Arunkumar

For Respondents : Mr.A.R.Suresh (for R1)

: No Appearance (for R2)

: Dismissed (for R3)

[vide order dt.08.02.2016]

JUDGMENT

The appellant/Insurance company has preferred this appeal, as against the award dated 29.10.2010 made in M.C.O.P.No.273 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Namakkal only in so far as it relates to quantum of compensation.

2.The essence of the case of the first respondent/claimant is that on 20.06.2007, at about 7.30 hours, when the claimant was traveling as pillion rider in the motorcycle bearing Regn.No.TN-57-E-2567 in Velaiyuthampalyam to



Sathiram road near TNPL Colony, at that time the driver of the Lorry bearing Regn.No.TN-45-A-1336 was driven by its driver in a rash and negligent manner and came from the back side and dashed against the claimant. In the impact, the claimant sustained grievous injuries on his right thigh including bone fracture at his hip. Immediately, he was admitted to Velaiyutham Government Hospital and then he was shifted to Rajinikanth Hospital, Karur, where he took one day treatment. Later, he was admitted to Ganga Hospital, Coimbatore as inpatient for two month and he underwent so many surgeries, for which, he spent a sum of Rs.4,00,000/- towards medical expenses. The claimant was working as coolie, doing stone cutting work and earning of Rs.5,000/- as monthly income. After the accident, the claimant was unable to do his day to day work. Therefore, the claimant filed the claim petition in M.C.O.P.No.273 of 2008 before the Tribunal, claiming a sum of Rs.18,25,000/- which was restricted to Rs.10,00,000/- as compensation.

3.The insurance company opposed the claim petition by contending that the driver of the two wheeler did not possess valid licence and the accident occurred due to a rash and negligent manner of driving of the driver of the motor cycle. Therefore, the insurance company is not liable to pay compensation. That apart the insurance company denied the age , income, nature of the injuries sustained by the claimant and prayed for dismissal of the claim petition.

4.Before the Tribunal, in order to prove the averments in the claim petition the claimant examined himself as PW.1, the owner of the two wheeler was examined as PW.2 besides examining one Dr.Sivalingam as PW.3. There were eleven documents marked as Ex.P1 to P11. On the side of the respondents, no oral or documentary evidence was adduced.

5.Based upon the oral and documentary evidence, the Tribunal has come to the conclusion that the accident had taken place due to rash and negligent manner driving of the driver of the second respondent and it was not assailed by the appellant, hence the said findings is hereby confirmed.

6.The Tribunal, by placing reliance on Ex.P11/disability certificate and also the deposition of PW.2/Doctor, who examined the claimant and who assessed his permanent disability at 50%, the Tribunal has taken the monthly salary of the claimant at Rs.4,500/- notionally and by applying multiplier 17, awarded a sum of Rs.4,59,000/- towards permanent disability. Apart from that a sum of Rs.25,000/- towards pain and suffering, a sum of Rs.15,000/- towards extra-nourishment, a sum of Rs.10,000/- towards transportation were awarded. Considering the treatments taken by the claimant at various hospitals and as per



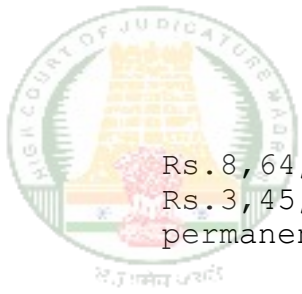
Ex.P3/Medical Bills, a sum of Rs.3,36,249/- was awarded by the Tribunal under the head of medical expenses. Thus, the Tribunal totally awarded a sum of Rs.8,45,249/- as compensation to the victim/claimant, which was directed to be paid jointly or severally by the appellant and the owner of the lorry to the claimants.

7.The learned counsel appearing for the appellant/ Insurance company would contend that the Tribunal awarded excessive amount in respect of permanent disability by adopting multiplier method by taking the disability at 50%. There is no justification on the part of the Tribunal to adopt multiplier method '17' when the age of the claimant was 35 years at the time of accident. The Tribunal did not consider that the Doctor had exaggerated the disability at 50% which is not in consonance with the nature of injuries sustained. Further, the Tribunal did not consider the 1/3rd deduction towards personal expenses of the claimant. Therefore, the learned counsel for the appellant / Insurance company has prayed for reducing the award of the Tribunal.

8.On the above contention, this Court heard the counsel for the claimant, who justified the award passed by the Tribunal and prayed for dismissal of the appeal.

9.Heard the counsel for both sides and perused the materials placed on record.

10.After going through the records, it is seen that at the time of accident, the claimant was aged 35 years and working as a stone cutter, coolie at Velaiyuthampalyam and earning a sum of Rs.5,000/- per month. The Tribunal has taken his monthly income as Rs.4,500/- notionally, applied multiplier method '17' and arrived at Rs.9,18,000/- out of which for 50% of the disability assessed by the Doctor awarded a sum of Rs.4,59,000/-. At the same time, this Court feels that when admittedly, the claimant was 35 years at the time of accident, the correct multiplier to be adopted is '16' and not '17' as per the Schedule appended to The Motor Vehicles Act. Further, the disability assessed by the Doctor, at 50%, in the opinion of this Court is excessive having regard to the nature of injuries sustained by the claimant and the period of his hospitalisation as unfolded from the claim petition. Therefore, this Court feels that assessing the disability of the claimant at 35% will be justifiable. Accordingly, the amount awarded by the Tribunal is hereby reduced and the claimant will be entitled for a sum of



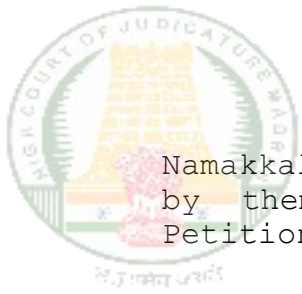
Rs.8,64,000/- (Rs.4,500 X 12 X 16) out of which 40% works out to Rs.3,45,600/- as amount payable to the claimant towards permanent disability.

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11.It is seen that the Tribunal did not award any amount towards Attendant charges and Loss of amenities and this has to be awarded at Rs.10,000/- and Rs.8,000/- respectively taking note of the nature of injuries sustained by the claimant and the period of his hospitalisation. That apart, the award passed by the Tribunal on the other conventional heads such as pain and suffering, Extra Nourishment and Transportation are fair and reasonable and the same is hereby confirmed. Thus, the compensation amount awarded by the Tribunal is hereby modified and reduced as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.4,59,000/-	Rs.3,45,600/-
Medical bills	Rs.3,36,249/-	Rs.3,36,249/-
Pain and suffering	Rs.25,000/-	Rs.25,000/-
Extra nourishment	Rs.15,000/-	Rs.15,000/-
Transportation	Rs.10,000/-	Rs.10,000/-
Attendant charges	-	Rs.10,000/-
Loss of amenities	-	Rs.8,000/-
Total	Rs.8,45,249/-	Rs.7,49,849/- round off (Rs.7,50,000/-)

12.In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.8,45,249/- is hereby reduced to Rs.7,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.273 of 2008 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court,



Namakkal, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS-VI)

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Sub Assistant Registrar

klt

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Namakkal.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.S. Arunkumar, Advocate SR.No.28491

+1cc to Mr.A.R.Suresh, Advocate SR.No.295201

C.M.A.No.2224 of 2011
and
MP.No.1 of 2011

NRSK(CO)
GMY(04/10/2019)