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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1805 of 2015 and
M.P.No.1 of 2015

National Insurance Company Limited,
Branch No.1, Madurai.

..Appellant/2nd Respondent

Vs.

1.C.Subramanian
2.V.Thangeswaran

..1st Respondent/Petitioners
..2nd Respondents/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 07.04.2015 made in M.C.O.P.No.376 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant	:	Mr.S.Vadivel
For R1	:	Mr.Amar D.Pandiya for Mr.S.Ravikumar
For R2	:	No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award dated 07.04.2015 made in M.C.O.P.No.376 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

2.The appellant is the second respondent in M.C.O.P.No.376 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai. The first respondent filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.01.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver-cum-owner of the van, the second respondent herein and directed the appellant-Insurance Company to pay a sum of Rs.4,95,000/- as compensation to the first respondent/claimant.

4.Challenging the quantum of compensation granted by the Tribunal in the award dated 07.04.2015 made in M.C.O.P.No.376 of 2012, the appellant has come out with the present appeal.



5.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal failed to see that P.W.2 and P.W.3/Doctors assessed the disability for the very same fracture suffered by the first respondent, excessively. The Tribunal having found that both the Doctors assessed the disability for the very same fracture, ought not to have considered the percentage of disability assessed by both the Doctors, the disability certificates marked as Exs.P7 and P8 and fixed disability at 50%. Both Doctors have not taken any independent X-Ray to assess the percentage of disability. The Tribunal failed to see that if really the first respondent suffered 20% disability as assessed by P.W.2/Doctor and 50% disability as assessed by P.W.3/Doctor, he would not have continued his job as Head Constable in the Police Department. The first respondent has not filed any document to prove that he continued treatment after discharge. He had taken treatment as in-patient only from 07.01.2012 to 17.01.2012. The compensation awarded by the Tribunal towards transportation, extra nourishment, attendant charges, pain and sufferings and loss of amenities are excessive. The first respondent has not produced any document to show that he lost police training skill and Tribunal erroneously awarded a sum of Rs.1,00,000/- towards loss of police training skill and prayed for reducing the compensation awarded by the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent contended that the first respondent sustained head injury and multiple injuries, internal and external injuries all over the body and sustained fracture. He was admitted in hospital and has taken treatment as in-patient from 07.01.2012 to 17.01.2012. The first respondent is working as Head Constable and due to the injuries and fracture, he could not continue his work. The first respondent examined P.W.2 and P.W.3 Doctors and proved the nature of injuries, treatment taken and disability suffered by him. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

7.I have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the entire materials on record.

8.From the materials available on record, the first respondent examined two Doctors as P.W.2 and P.W.3 with regard to nature of injuries, disability suffered by him due to the injuries in the accident. P.W.2/Doctor assessed the percentage of disability at 20% and P.W.3/Doctor assessed the percentage of disability at 50%, for the very same injuries. The Tribunal considering the evidence of both the Doctors, fixed the



percentage of disability at 50% and awarded compensation. According to the Tribunal, P.W.2/Doctor did not take into account the Socio Economic problem and fixed disability only on medical ground. The reason given by the Tribunal for fixing 50% disability is erroneous. The Tribunal has considered the evidence of P.W.2 and P.W.3 Doctors and mentioned the injuries sustained by the first respondent and disability. Considering the said portion of the award, the disability sustained by the appellant is fixed at 30%, instead of 50% fixed by the Tribunal. A sum of Rs.1,50,000/- awarded by the Tribunal for 50% disability is reduced to Rs.90,000/- [Rs.3,000/- X 30] at the rate of Rs.3,000/- per percentage for 30% disability. The first respondent has taken treatment as in-patient from 07.01.2012 to 17.01.2012 for a period of 11 days. The Tribunal has awarded excessive sum of Rs.40,000/- towards attendant charges and the same is reduced to Rs.15,000/-. The Tribunal has awarded excessive sum of Rs.20,000/- towards transportation and the same is reduced to Rs.10,000/-. The Tribunal has granted a sum of Rs.1,00,000/- towards loss of amenities, which is excessive and the same is reduced to Rs.50,000/-. The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of police training skill. The first respondent has not proved that he lost his training skill. In such circumstances, the award of the Tribunal granting a sum of Rs.1,00,000/- towards loss of police training skill is liable to be set aside and is hereby set aside as the first respondent has not proved that he lost his police training skill. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	20,000/-	10,000/-	reduced
2.	Extra nourishment	30,000/-	30,000/-	confirmed
3.	Attendant charges	40,000/-	15,000/-	reduced
4.	Damage to clothes	5,000/-	5,000/-	confirmed
5.	Disability	1,50,000/-	90,000/-	reduced
6.	Pain and suffering	50,000/-	50,000/-	confirmed
7.	Loss of amenities	1,00,000/-	50,000/-	reduced
8.	Loss of police training skill	1,00,000/-	-	set aside
	Total	Rs.4,95,000/-	Rs.2,50,000/-	reduced by Rs.2,45,000/-



9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,95,000/- is hereby modified to Rs.2,50,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the modified award amount along with interest and costs, less the amount if any already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.376 of 2012 on the file of the Motor Accident Claims Tribunal, VI Small Causes Court, Chennai, if the entire amount has already been deposited. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai.

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

+1 cc to M/s.S.Ravikumar, Advocate Sr.No. 35626

AKM/05.11.19/4P- 4C /

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M.P.No.1 of 2015