

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3379 of 2017
and C.M.P.No.13040 of 2018

The National Insurance Co. Ltd.,
No.7, Raja Street,
P.B.No.19,
Gobichettipalayam,
Erode District. .. Appellant

Vs.

1.K.Ramasamy
2.Jagannathan .. Respondents
(R2 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 11.09.2017, made in M.C.O.P.No.80 of 2016, on the file of the III Additional District and Sessions Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

For Appellant : Mr.S.Vadivel

For R1 : Mr.D.R.Arunkumar

J U D G M E N T
सत्यमेव जयते

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company, challenging the award dated 11.09.2017, made in M.C.O.P.No.80 of 2016, on the file of the III Additional District and Sessions Court, (Motor Accident Claims Tribunal), Gobichettipalayam.

2.The appellant-Insurance Company is the 2nd respondent in M.C.O.P.No.80 of 2016, on the file of the III Additional District and Sessions Court, (Motor Accident Claims Tribunal), Gobichettipalayam. The 1st respondent filed the said claim petition, claiming a sum of Rs.53,63,590/- as compensation for the injuries sustained by him in the accident that took place

on 28.10.2015.

3.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing negligence on the part of the 2nd respondent, driver-cum-owner of the goods carriage van when admittedly the 1st respondent dashed against the van from behind. The Tribunal ought to have apportioned equal negligence on both the 1st respondent/claimant as well as the 2nd respondent, driver-cum-owner of the goods carriage van. The Tribunal ought to have taken into consideration the entire averments in Ex.P2-FIR, while fixing negligence on the part of the 2nd respondent, driver-cum-owner of the goods carriage van. The Tribunal failed to see that in the cross-examination, the 1st respondent has admitted that the complainant of FIR is not an eye witness to the accident. The 1st respondent was aged 60 years at the time of accident. The Tribunal erred in fixing the notional income at Rs.6,000/- and applying the multiplier of '13', which is not correct. The Tribunal ought not to have awarded any amount towards loss of amenities and loss of marital prospects, for a person who is aged 60 years. The multiplier applicable is '9', whereas the Tribunal has adopted the multiplier of '13', which is not correct. The Tribunal has awarded excessive amounts for loss of love and affection and prayed for reducing the compensation awarded by the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent contended that the Tribunal considering Ex.P10-disability certificate, has fixed the percentage of disability at 100% and rightly adopted percentage method in awarding compensation to the 1st respondent for the functional disability suffered by him. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

5.Heard the learned counsel appearing for the appellant-Insurance Company as well as the 1st respondent and perused the materials available on record.

6.From the materials on record, it is seen that the Tribunal on perusal of evidence of P.W.1-injured eye witness, Ex.P2-FIR, Ex.P20-Charge sheet, Ex.P19-rough sketch in proper perspective and in the absence of any independent evidence and the documents produced on behalf of the appellant-Insurance Company, fixed the negligence on the part of the 2nd respondent, the driver-cum-owner of the goods carriage van. The 1st respondent was 60 years at the time of accident. The Tribunal erred in applying the multiplier of '13', when the correct multiplier is '9'. The Tribunal considering the age of the 1st respondent, fixed the notional income at Rs.6,000/- per month. In the absence of any evidence to disprove the fact that the 1st respondent did not

suffer 100% functional disability, the Tribunal fixed the disability at 100% and adopted percentage method in granting compensation under the head, loss of earning capacity. The same is modified to Rs.6,48,000/- [Rs.6,000/- x 12 x 9 x 100%]. The Tribunal considering the age of the 1st respondent, ought not to have granted compensation under the head of loss of amenities and loss of marital prospects. Hence, the same is set aside and a sum of Rs.1,00,000/- is granted towards loss of amenities. The amounts awarded under other heads are just and reasonable and they are hereby 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.	Loss of earning capacity	9,36,000/-	6,48,000/-	reduced
2.	Pain and suffering	1,00,000/-	1,00,000/-	confirmed
3.	Attender charges	3,000/-	3,000/-	confirmed
4.	Extra nourishment	5,000/-	5,000/-	confirmed
5.	Medical expenses	6,17,461/-	6,17,461/-	confirmed
6.	Loss of amenities and marital prospects	2,00,000/-	-	Set aside
7.	Loss of amenities	-	1,00,000/-	granted
8.	Transportation	2,682/-	2,682/-	confirmed
	Total	18,64,143/- rounded off to 18,64,150/-	14,76,143/- rounded off to 14,76,150/-	Reduced by Rs.3,88,000/-

7. In the result, the appeal is partly allowed and award granted by the Tribunal at Rs.18,64,150/- is reduced to Rs.14,76,150/- along with interest and costs. The learned counsel appearing for the appellant-Insurance Company submitted that the appellant has already deposited the entire award amount. The 1st respondent/claimant is

permitted to withdraw the modified award amount, less the amount already withdrawn, if any, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the balance amount lying in the credit of M.C.O.P.No.80 of 2016. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gsa

To

1.The III Additional District and Sessions Judge,
(Motor Accident Claims Tribunal),
Gobichettipalayam.

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

+1 CC to Mr.S.Vadivel, Advocate sr 7537.

+1 CC to Mr.D.R.Arunkumar, Advocate sr 7907.

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and C.M.P.No.13040 of 2018

AD(CO)
SP(17/07/2019)

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