

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.2726 of 2018
and
C.M.P.No.20605 of 2018

United India Insurance Company
Ltd., Post Box No.34,
C.G.Complex, 139, Kumaran Road,
Tirupur - 641 601. ... Appellant/2nd Respondent

vs.

1.N.Govindaraj ...1st Respondent/Petitioner

2.M.Ponnulingam ...2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 29.08.2017 made in M.C.O.P.No.431 of 2013 on the file of Motor Accidents Claims Tribunal (II Additional District and Sessions Judge), Tiruppur.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.K.Mayilsamy for R1

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been filed by the insurance company, challenging the quantum with specific reference to the income fixed. Therefore, we are not inclined to go into the other aspects of the matter.

2.The accident occurred in the year 2013. The first respondent/claimant claimed an income of Rs.30,000/- per month. He is working as an Assistant in a private concern. He has also written preliminary examination in Chartered Accountancy. He is

aged about 32 years. P.W.3, who is the doctor opined that the disability is at 51%. The Tribunal fixed the loss of income at Rs.12,000/- as against Rs.13,000/- claimed and adopted multiplier 16 and thus fixed the compensation at Rs.15,55,200/- and it is this amount, which is challenged.

3.Learned counsel appearing for the appellant has submitted that the Tribunal failed to note that it is only physical disability and therefore the same cannot be equated with the earning capacity. There is no need for adopting multiplier method. The disability assessed in part of the body cannot be made applicable to the whole body. Thus, the amount awarded by the Tribunal at Rs.15,55,200/- is excessive.

4.We do not find any merit in this appeal. Even during the pendency of the appeal, by way of interim order, the first respondent/ claimant was referred to the Regional Medical Board constituted by Government Doctors. A report was given by the aforesaid Board wherein it is stated as follows:

Post Head Injury sequela with right hemiparesis.
Grading:Modified Rankin scale 3
Disability: 55% (fifty five percent)

5.Thus the Medical Board constituted by the experts and medical officers working in the State Government has assessed the disability as 51%. We are dealing with the disability in the brain as the first respondent/claimant has suffered head injury. Even P.W.3 has stated that the first respondent/claimant is unable to do work properly. Therefore, we are of the view that the injury has certainly impacted the work ability of the claimant.

6.The Tribunal has only fixed 45% towards disability. Though there is no difficulty in appreciating the submission that physical disability cannot be equated with loss of earning capacity, in the light of the evidence of P.W.3 coupled with the assessment made by the Medical Board pursuant to the direction issued by this Court, the contentions raised cannot be countenanced.

7.Learned counsel appearing for the appellant has made one more submission. It is submitted that in view of the judgment of the Constitution Bench in National Insurance Company Limited Vs. Pranay Sethi and Others ((2017) 16 SCC 680), 40% will have to be added towards future prospects as against 50%. We are not inclined to accept the aforesaid submission. In the aforesaid Constitution Bench judgment, it has not been stated that the private employees are entitled for 40% towards future prospects. The Constitution Bench was making a difference between permanent employees as against the temporary one. It is nobody's case that

the first respondent/claimant's employment is a temporary one. Merely because he is working in a private concern, it cannot be stated that only 40% should be added towards future prospects. We do not find any material with respect to the temporary nature of employment.

8.In such view of the matter, we do not find any error in the award of the Tribunal warranting interference. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9.The appellant insurance company is directed to deposit the entire amount of compensation awarded by the Tribunal along with proportionate interest, less the amount if any already deposited, to the credit of M.C.O.P.No.431 of 2013 on the file of Motor Accidents Claims Tribunal (II Additional District and Sessions Judge), Tiruppur, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent/claimant is permitted to withdraw the amount deposited.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Tiruppur.

2.The Record Keeper,
V.R.Section, High Court, Madras.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.18564

+1cc to Mr.K.Mayilsamy, Advocate SR.No.18817

+1cc to Special Government Pleader (CS) SR.No.19559

C.M.A.No.2726 of 2018

PMS (CO)
GMY (03/10/2019)