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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.265 of 2014

The Manager,
National Insurance Company Limited,
12, Muruga Complex,
K.K. Road, Villupuram.

... Appellant/2nd Respondent

vs.

1) Appasamy ... 1st Respondent/Petitioner
2) Jeyachandran ... 2nd Respondent/1st Respondent
(Notice to 2nd respondent may be dispensed with since he remained
ex parte before the Tribunal)

Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the judgment and decree in MCOP.No.2133 of 2009 dated
15.03.2013 on the file of the Motor Accidents Claims Tribunal, III
Additional Subordinate Court, Tiruchirappalli.

For Appellants : Mr.J.S.Murali

For R1 : Mr.N.Sudhagar Nagaraj

JUDGMENT

Challenging the quantum of compensation, the insurer has filed
this appeal.

2.Learned counsel for the appellant would contend that fixation
of disability percentage at 37% is on the higher side and the
Tribunal has awarded excessive sum of Rs.20,000/- towards pain and
sufferings. It is further contended that the Tribunal has awarded
Rs.25,000/- towards future medical expenses without any evidence and
discussion that too with interest which is arbitrary and
unsustainable. Thus, he prayed for allowing this appeal.

3.Per contra, learned counsel for the 1st respondent/claimant
would contend that though PW3 Doctor has certified the percentage of
disability as 40%, the Tribunal has mechanically without any
evidence, has reduced the same to 37% which is unsustainable and
further, there is no award for future prospects and therefore, he
would state that the award amount being meagre, the interference of
this Court is not required.



4. Heard the learned counsel for the appellant as well as the 1st respondent.

5. Perusal of record shows that the 1st respondent/claimant has sustained fracture in his right knee and right thigh and injuries on right cheek and left hand. He took treatment at Government General Hospital, Trichy, as inpatient between 12.06.2009 and 15.06.2009 and for further treatment, he was treated as inpatient at Sudharsana Hospital between 15.06.2009 and 21.07.2009 and incurred Rs.45,056/- towards medical expenses. PW3 Doctor has deposed that to fuse the fractured bones in the right thigh, a rod has been inserted, due to which, the 1st respondent would find it difficult to squat, bend the right leg, lift heavy objects and to do hard work. PW3 has assessed the permanent disability at 40%, but the Tribunal has fixed the same at 37% and awarded Rs.74,000/- (37x2000) by awarding Rs.2,000/- per percentage of disability. Apart from the above, the Tribunal has awarded Rs.20,000/- towards pain and suffering; Rs.5,000/- towards attendant charges; Rs.1,000/- towards damage to clothes and Rs.10,000/- towards transportation and nutrition and Rs.25,000/- towards future medical expenses.

6. The claimant is a Welder by avocation and certainly the injuries would affect his avocation and further, the rod inserted in the right leg has to be removed and therefore, the award towards future medical expenses cannot be found fault with. In my considered opinion, the award passed by the Tribunal cannot be said to be excessive warranting interference.

7. It is represented that pursuant to the interim order of stay, the appellant has deposited the entire amount and the 1st respondent/claimant was also permitted to withdraw Rs.2,50,000/- with interest. Therefore, the 1st respondent/claimant is permitted to withdraw the balance amount with accrued interest without filing formal permission petition before the Tribunal.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar (CS)

To

The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,

<https://hcservices.ecourts.gov.in/hcservices/>

Trichy appeal.



Copy to:

The Section Officer,
V.R. Section
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1cc to Mr.J.S.Murali, Advocate, SR.No.71653

+1cc to Mr.N.Sudhagar Nagaraj, Advocate, SR.No. 854407

CMA (MD) No.265 of 2014
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