BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CMA(MD)No.486 of 2019
and
CMP(MD)No.8546 of 2019

The Branch Manager,
National Insurance Company Ltd.,
4132, Keela Raja Veedhi,
Pudukottai. … Appellant/2nd Respondent

versus

1. Rajkumar ...1st Respondent/Petitioner
2. Kuppamuthu ... R2/2nd Respondent

Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2018 made in M.C.O.P.No.784 of 2013 on the file of the Motor Accident Claims Tribunal/Special Court for E.C.&N.D.P.S. Act cases, Pudukottai.

For Appellant : M/s.R.Srinivasan
For R1 : Mr.B.Pravin Kumar

JUDGMENT

The first respondent Rajkumar, aged about 41 years, doing a profession of setting awning, earning a sum of Rs.7,000/- p.m., met with an accident on 19.09.2013 and sustained injuries all over his body. Hence, he filed a petition in M.C.O.P.No.784 of 2013 on the file of the Motor Accident Claims Tribunal/Special Court for E.C.&N.D.P.S. Act cases, Pudukottai, claiming compensation of Rs.15,00,000/-. Challenging the quantum of compensation awarded by the Tribunal as excessive, the present appeal has been filed by the Insurance Company.

2. It is the contention of the learned counsel appearing for the appellant/Insurance Company that though the Doctor has issued a disability certificate, ascertaining the disability at 15%, the Tribunal has taken the functional disability at 25% and also by applying the multiplier method of 14, determined the compensation towards permanent disablement at Rs.2,52,000/-, which is very high. Therefore, the same has to be reduced.

3. A perusal of the award passed by the Tribunal shows that the Doctor, who treated the injured, was examined as P.W.2, wherein, he deposed that due to the injuries sustained in the

accident, his right knee's movement was restricted from 10% to 15%, for which, there would have pain in the knee. Further, his right ankle's movement was also restricted from 5 degrees to 10 degrees, due to which, he could not be able to squat. Moreover, due to the injuries sustained by the claimant and also for the pain, he could not do his profession as he did earlier. Therefore, the Court below ascertained the disability at 25%. According to the appellant, the Doctor, who treated the injured, assessed the disability at 15%. When such being the case, the Tribunal should have taken the functional disability at 20%. However, the learned counsel appearing for the appellant fairly submitted that considering the nature of injuries sustained by the claimant, functional disability may be taken as 20%, for which, the learned counsel appearing for the claimant has no objection in taking the functional disability at 20%. With regard to the other aspects, namely, income of the injured and multiplier method, there is no dispute on the side of the appellant Insurance Company. Considering the same, this Court is inclined to reduce the functional disability from 25% to 20%. Accordingly, the compensation towards functional disability would be Rs.2,01,600/- (Rs.6,000/- x 12 x 14 x 20%)

4. Sofaras the compensation awarded under other heads are concerned, there is no dispute on the side of the appellant Insurance Company and hence, the same are hereby confirmed. The break-up details of the revised compensation read as follows:

Pain and suffering	-	Rs. 50,000/-
Permanent disability	-	Rs.2,01,600/-
Loss of amenities	-	Rs. 25,000/-
Medical expenses	-	Rs. 90,300/-
Extra nourishment	-	Rs. 10,000/-
Transportation	-	Rs. 3,000/-
attendant charges	-	Rs. 9,000/-
Total	-	Rs.3,88,900/-

5. In the result, the Civil Miscellaneous Appeal is allowed by reducing the compensation from Rs.4,39,300/- to Rs.3,88,900/-, which is payable by the appellant Insurance Company along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit.

6. It is submitted by the learned counsel appearing for the appellant Insurance Company that the Insurance Company has already deposited the entire award amount.

7. Hence, the Tribunal shall transfer the award amount to the claimant's Bank Account directly through RTGS, within a period of

three weeks from the date of receipt of a copy of this Judgment. The Insurance Company is permitted to withdraw the balance amount, if any. No costs.

Sd/-
Assistant Registrar (CS-I)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

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To
The Special Court for E.C.&N.D.P.S. Act cases/
Motor Accident Claims Tribunal,
Pudukottai.

Copy to
The Section Officer,-2 copies
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.R.SRINIVASAN, Advocate (SR-95736[F] dated 04/11/2019)

+1 CC to Mr.B.PRAVINKUMAR, Advocate (SR-95737[F] dated 04/11/2019)

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