



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.M.A (MD) No.1256 of 2014

and

M.P (MD) No.3 of 2014

The Branch Manager,
National Insurance Co. Ltd.,
Pudukkottai.

.. Appellant/ 2nd
Respondent

Vs.

1.S.Balraj

.. 1st Respondent /
Claimant

2.Vasantha

.. 2nd Respondent /
1st Respondent

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 15.09.2011, passed in M.C.O.P.No.108 of 2009 by the Motor Accident Claims Tribunal / Chief Judicial Magistrate's Court, Pudukkottai.

For Appellant : Mr.N.Murugesan

For Respondents : No appearance

JUDGMENT

It is a case of injury. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.74,880/- towards permanent disability, Rs.5,000/- towards pain and sufferings and Rs.5,000/- towards transport expenses, medical expenses, extra nourishment, etc., totally Rs.84,880/- as compensation. The Tribunal has directed the appellant / Insurance Company and 2nd respondent to pay jointly and severally the entire compensation amount with 7.5% interest per annum from the date of petition till the date of realization. The appellant / Insurance Company has filed this appeal questioning the quantum.

2.The learned counsel appearing for the appellant / Insurance Company would submit that though the claimant sustained only https://hcservicescourts.gov.in/cases, the Tribunal has awarded higher compensation



under the head of permanent disability by adopting multiplier method. Thus, he prayed to reduce the award passed by the Tribunal.

3.Despite notice being served on the respondents and their names are being printed in the cause list, there is no representation on behalf of the respondents either in person or through Counsel.

4.Heard the learned counsel appearing for the appellant / Insurance Company and perused the records carefully.

5.The date of accident is on 25.04.2008. Admittedly, it is not in dispute that due to accident, the claimant has sustained severe multiple injuries and bone fractures. As per the evidence of P.W.3, doctor, the claimant has sustained the following injuries:

"(i)Compound fracture of right arm bone and right hand wrist lower end of radius bone fracture.

(ii)Even after proper medical treatment, the fractured bones had joined wrongly caused mal-union and deformity, right shoulder joint bone and right arm wrist and turning movements have been grossly reduced and restricted.

(iii)He was operated twice for setting right the fractured bones and steel plates fitted.

(iv)He is unable to lift heavy objects and unable to do heavy manual works and having constant stiffness and pain. He is suffering from loss of gripping powers and strength of right arm".

P.W.3, doctor has also assessed the quantum of disability as 13% and he has issued Ex.P.4, disability certificate to that effect. Perusal of the evidence of P.W.3, doctor and Ex.P.4, disability certificate would show that the claimant's right arm movements are grossly restricted and reduced and he is unable to perform any work practically due to the permanent disability sustained by him. Considering the fact that the Tribunal has fixed disability on the basis of Ex.P.4, disability certificate issued by P.W.3, doctor, this Court is of the view that the disability fixed by the Tribunal as 13% requires no interference.

6.At the time of accident, the claimant was stated to be working as a labour in a stone quarry and earning a sum of Rs.6,000/- per month. In Ex.P.3, wound certificate, it has been stated that he was aged about 40 years.

7.The Hon'ble Supreme Court and this Court have time and again held that if there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle till the rest of his life, in that event, loss of income or earning may be ascertained by applying "multiplier method". As stated earlier, in this case, the claimant was working as a labour in a stone quarry. It is needless



to say that the hands are very important to the nature of job of labour. Due to accident, his right arm movements are grossly restricted and reduced. Therefore, he lost his avocation. The Tribunal, after considering the said aspect, has rightly adopted the multiplier method for arriving at reasonable compensation towards disability.

8.It is not in dispute that the claimant was aged about 40 years at the time of the accident. As stated earlier, the claimant was stated to be working as a labour in stone quarry and earning Rs.6,000/- per month as income. But, he has not produced any document in order to substantiate the same. The Tribunal after considering the year of the accident and avocation of the claimant, has rightly fixed Rs.3,000/- as notional monthly income of the deceased and adopted multiplier '16' considering the age of the claimant and awarded a sum of Rs.74,880/- towards 13% permanent disability sustained by the claimant. It is seen that the Tribunal has not added any sum towards future prospects. The award passed towards pain and sufferings and transportation expenses, other medical expenses, extra nourishment, etc., cannot be considered as excessive. Therefore, this Court is not inclined to interfere with the award passed by the Tribunal.

9.In view of the above, this Civil Miscellaneous Appeal is dismissed and the award passed by the Tribunal is confirmed. The appellant / Insurance Company and the 2nd respondent are directed to deposit jointly and severally the entire award amount, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the entire amount with accrued interest and costs, less the amount already withdrawn, by filing an application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate's Court,
Pudukkottai.



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

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+1 CC to M/s.N.MURUGESAN, Advocate (SR-79860[F] dated 06/08/2019)

**JUDGMENT MADE IN
C.M.A(MD)No.1256 of 2014**

smn

JM/17.09.2019/4P/5C