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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2617 of 2010

and

M.P.No.1 of 2010

(Through Video Conferencing)

National Insurance Company Ltd.,
74-A, Paramathy Road,
Namakkal.

...Appellant/II Respondent

Vs.

1.Raja

... 1st Respondent/Petitioner

2.N.Loganathan

...2nd Respondent/1st Respondent

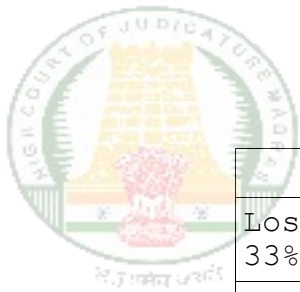
Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree of the learned Motor Accidents Claims Tribunal [Addl. District Judge, Fast Track Court No.IV], Coimbatore at Tiruppur in M.C.O.P.No.1071 of 2003 dated 07.04.2006.

For Appellant : Mrs.N.B.Surekha
R1 : Notice Served
R2 : Not Ready Notice

J U D G M E N T

The Insurance Company is the appellant in this Civil Miscellaneous Appeal. It is aggrieved by the impugned Judgment and Decree dated 07.04.2006 passed by the Motor Accidents Claims Tribunal (Additional District Judge, Fast Track Court No.IV) at Tiruppur in M.C.O.P.No.1071 of 2003.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,14,711/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit to the 1st respondent / claimant who chose to remain absent in this appeal after having obtained a partial decree in his favour. The Tribunal has awarded the aforesaid compensation of Rs.2,14,711/- under the following heads:-



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Heads	Amount
Loss of Income (3081.72 x 12 x 17 x 33%)	Rs.2,07,461.39
Hospital Transportation	Rs. 250.00
Nourishment	Rs. 1,000.00
Mental agony, pain and suffering	Rs. 6,000.00
Total	Rs.2,14,711.39 rounded off to Rs.2,14,711/-

3. Since notice was not served on the 1st respondent / claimant, substituted service by way of paper publication was ordered. The appellant also took out the substituted service on the 1st respondent / claimant. However, there is no representation on behalf of the 1st respondent /claimant. It appears that the amount deposited by the appellant Insurance Company before the Tribunal has also not been withdrawn by the 1st respondent / claimant. Considering the claim is of the year 2003 and this appeal is of the year 2010, this appeal is taken up for final disposal.

4. The brief facts of the case are that on 26.08.2003 at about 24.00 hours on the Kovai to Avinashi N.H.47 Main Road, near Arasur Division, when the 1st respondent/claimant was driving a Mini door Auto bearing registration number TN-39-P-3350, a lorry bearing registration number KA-01-C-4996 belonging to the 2nd respondent insured with the appellant Insurance Company was allegedly driven by its driver in a rash and negligent manner and hit the 1st respondent / claimant, as a result of which, the 1st respondent / claimant sustained injuries and was taken to the Govt. Hospital, Tirupur for treatment.

5. The 1st respondent/claimant filed a claim petition for compensation of Rs.5,00,000/- for the injuries suffered by him. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.2,14,711/- payable by the appellant Insurance Company and the 2nd respondent jointly or severally to the 1st respondent / claimant. Aggrieved by the same, the appellant Insurance Company has filed this Civil Miscellaneous Appeal to assail the impugned Judgment and Decree passed by the Tribunal.

6. The main ground on which this appeal has been filed by the appellant is that the Tribunal erred in awarding the aforesaid compensation by applying the multiplier of 17 for simple injuries suffered by the 1st respondent/claimant. It is submitted that the 1st respondent /claimant met with an accident which merely resulted in fracture to the tibia and fibula bone



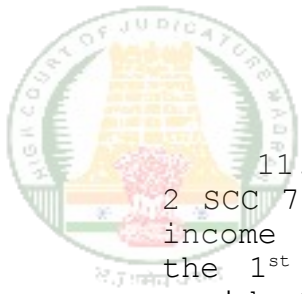
which did not involve in any operation. It is submitted that there was no permanent disability. The learned counsel for the appellant Insurance Company submits that Ex.P4 Disability Certificate issued by P.W.2 Doctor merely shows the injuries to the tibia and fibula bone. Apart from the above injuries, the 1st respondent / claimant had suffered few injuries on his shoulder and in the elbow. It is submitted that such injuries did not warrant application of multiplier.

7. I have considered the arguments advanced by the learned counsel for the appellant. I have also perused the evidence on record particularly Ex.P4 Disability Certificate issued by P.W.2 Doctor and the impugned Judgment and Decree passed by the Tribunal.

8. From the records it is noticed that the 1st respondent had produced P.W.2 Dr.Senthil Kumar before the Tribunal who has certified 37.5% permanent disability of the 1st respondent / claimant. The Tribunal has taken the permanent disability of the 1st respondent / claimant as 33% and has awarded the aforesaid compensation of Rs.2,14,711/- by taking the monthly income of the 1st respondent / claimant at Rs.3081.72 and by applying multiplier 17 considering the age of the 1st respondent / claimant as 24 years at the time of the accident.

9. As per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343, the compensation has to be awarded based on the multiplier method only where there is a permanent disability or partial permanent disability. In this case, there is no evidence to suggest either permanent disability or partial permanent disability barring the deposition of Doctor who appears to have given an exaggerated statement before Tribunal. Be that as it may, once permanent disability or partial permanent disability is established, the Courts have to ultimately arrive at a functional disability based due the injuries suffered by the claimant with reference to the avocation. In other words, the Tribunal has to ascertain the impact injuries on the avocation of the 1st respondent / claimant.

10. The 1st respondent / claimant was aged about 24 years at the time of the accident. The injuries suffered by the 1st respondent / claimant did not have any lasting impact on the earning capacity. It would have however put him out of action for few months. Therefore, he is entitled for compensation during the period when he was incapacitated in work toward loss of income. He is also entitled for compensation for the injuries suffered by him. Considering the same, I am inclined to modify the compensation awarded by the Tribunal to percentage basis.



11. In Syed Sadiq Vs. United India Insurance Co.Ltd., (2014) 2 SCC 735, the Hon'ble Supreme Court has considered the notional income of a vegetable as Rs.6,500/- per month. Therefore, since the 1st respondent /claimant was a driver at the time of the accident, the notional income of the 1st respondent / claimant is taken as Rs.4,000/- per month as was claimed in the claim petition for the purpose of computing the compensation towards loss of income for 15 months.

12. Accordingly, the compensation awarded by the Tribunal is re-quantified as follows:-

Heads	Amount
Loss of Income for 10 months (Rs.4,000/- x 15)	Rs.60,000/-
Hospital Transportation	Rs. 1,000/-
Extra Nourishment	Rs.10,000/-
Pain and suffering	Rs.15,000/-
Injury (33 x 2,000)	Rs.66,000/-
Total	Rs.1,52,000/-

13. Though the Tribunal had directed to the appellant Insurance Company and the 2nd respondent to deposit the compensation jointly and severally, to meet the ends of justice, the appellant Insurance Company is directed to pay the compensation to the appellant as the appelalnt respondent Insurance Company had contracted a contract of insurance which is a contract of indemnity to indemnify the 2nd respondent owner of the vehicle against any liability that may be fastened against the owner of the insured vehicle under the Motor Vehicles Act, 1988.

14. Therefore, the appellant Insurance Company is directed to deposited a sum of Rs.1,52,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit and costs awarded by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

15. In case the appellant Insurance Company has deposited the amount in excess of the amount awarded in this appeal, it is permitted to withdrawn the balance amount together with interest thereon, by filing suitable application before the Tribunal.

16. On such deposit, the 1st respondent / claimant is permitted to withdraw the same together with interest and cost, less any amount already withdrawn, by filing suitable applications.



17. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To
The Additional District Judge,
Fast Track Court No.IV,
Motor Accidents Claims Tribunal,
Tiruppur.

+1CC to Mrs.N.B.Surekha, Advocate, Sr.No.42785

C.M.A.No.2617 of 2010
and M.P.No.1 of 2010

PVS (CO)
K.RK. (15.09.2021)