

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1427 of 2013
and M.P.No.1 of 2013

National Insurance Co. Ltd.
East main road
Pudukottai.

... Appellant/3rd Respondent

Vs.

1.Ramesh ...1st Respondent/Claimant

2.Raghupathy ...2nd Respondent/1st Respondent

3.Vellaichamy ...3rd Respondent / 2nd Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 12.03.2012 made in M.C.O.P.No.1029 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

For Appellant : Mr.S.Vadivel

For R1 : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R2 and R3 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 12.03.2012 made in M.C.O.P.No.1029 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.1029 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur. The 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 30.08.2010.

3. According to the 1st respondent, on the date of accident i.e., on 30.08.2010, at 03.00 p.m., while the 1st respondent was standing on the side of the lorry bearing Registration No. TN27-B 4749, which was parked near Muniyandi vilas hotel along Kangeyam - Avinasipalayam road, the 2nd respondent, driver of the said lorry belonging to the 3rd respondent drove the same in a rash and negligent manner, dashed on the 1st respondent and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2 and 3 and appellant.

4. The respondents 2 and 3, driver and owner of the lorry remained exparte before the Tribunal.

5. The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and stated that the 1st respondent was negligently standing on the right back side of the lorry and invited the accident. The 1st respondent has to prove that the driver of the lorry was possessing valid driving license at the time of accident. The appellant/Insurance Company has also denied the age, avocation and income of the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, one Palani was examined as P.W.2 and Dr. Senthilkumar was examined as P.W.3 and marked five documents as Exs. P1 to P5. The appellant/Insurance Company examined one Raghupathi, driver of the lorry, as R.W.1 and did not let in any documentary evidence.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the lorry belonging to the 3rd respondent and directed the respondents 2 and 3 as well as the appellant/Insurance Company being insurer of the said lorry to jointly and severally pay a sum of Rs.3,70,200/- as compensation to the 1st respondent.

8. Against the said award dated 12.03.2012 made in M.C.O.P.No.1029 of 2010, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in adopting multiplier method for awarding compensation towards disability, when there

was no evidence before the Tribunal that the 1st respondent suffered any amputation or suffered total and permanent disability. Both the 1st respondent and P.W.3/Doctor have not deposed that the 1st respondent had permanent disability to continue his avocation and lost his earning capacity. The Tribunal failed to see that concept of percentage of physical disability and functional disability are totally different and erred in fixing the percentage of disability assessed by P.W.3/Doctor. P.W.3/Doctor is an interested witness and the percentage of disability assessed by him is exaggerated and against the medical guidelines for assessing the disability. The 1st respondent has not proved his avocation and income. The monthly income fixed by the Tribunal is excessive and prayed for setting aside the award of the Tribunal and allowing this appeal.

10.The learned counsel appearing for the 1st respondent contended that the appellant was aged 26 years at the time of accident, he was a coolie and was earning a sum of Rs.6,000/- per month. In the accident, he sustained multiple injuries, fracture, crush injury in the left knee, left foot and abrasions all over the body. P.W.3/Doctor who treated the 1st respondent, has assessed the disability of the 1st respondent at 40% and deposed about the nature of injuries and disability suffered by the 1st respondent. The Tribunal without any reason reduced the percentage of disability assessed by the Doctor to 35% and awarded compensation. The 1st respondent was earning a sum of Rs.6,000/- per month by working as a coolie. The Tribunal erroneously fixed a sum of Rs.4,500/- as monthly income and awarded only a meagre amount. The total compensation awarded by the Tribunal is not excessive. The Tribunal considering the injuries and evidence of P.W.3/Doctor has awarded compensation by adopting multiplier method, the same is in order and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials available on record.

12.In the appeal, the appellant is challenging only the quantum of compensation awarded by the Tribunal. The contention of the learned counsel appearing for the appellant is that the Tribunal erred in awarding compensation by adopting multiplier method by fixing monthly income at Rs.4,500/-, when there is no evidence to show that the 1st respondent suffered functional disability. The said contentions are not acceptable in view of the materials on record. The 1st respondent has stated that he was aged 26 years and was working as a coolie at the time of accident and nature of injuries suffered by him. In the accident, he sustained multiple fractures and crush injury in

his left leg. The same was proved by him by examining himself as P.W.1 and the Doctor as P.W.3, who treated the 1st respondent. P.W.3/Doctor in his evidence has deposed about the nature of injuries and percentage of disability. The Tribunal considering the nature of injuries, nature of work done by the 1st respondent, disability assessed by P.W.3/Doctor and evidence of P.W.3/Doctor, reduced the percentage of disability to 35% and awarded compensation by adopting multiplier method.

13.Considering the above materials, I am of the view that the multiplier method adopted by the Tribunal is not erroneous. The 1st respondent was aged 26 years at the time of accident. The Tribunal has applied multiplier '18'. As per the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), the correct multiplier is 17. In view of the same, by applying multiplier '17', the amount awarded by the Tribunal towards disability is modified to Rs.3,21,300/- (Rs.4,500/- X 12 X 17 X 35/100). Considering the nature of injuries sustained by the 1st respondent, the amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent disability	3,40,200	3,21,300	Reduced
2.	Transportation	5,000	5,000	Confirmed
3.	Extra nourishment	5,000	5,000	Confirmed
4.	Pain and suffering	20,000	20,000	Confirmed
	Total	3,70,200	3,51,300	Reduced by Rs.18,900/-

14.With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,70,200/- awarded by the Tribunal is hereby reduced to Rs.3,51,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondents 2 and 3 as well as the appellant/Insurance Company are jointly and severally directed to deposit the modified award amount now

determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent is permitted to withdraw the modified award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1029 of 2010 on the file of Motor Accident Claims Tribunal, Principal Sub Court, Tiruppur, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Subordinate Judge
Motor Accident Claims Tribunal
Tiruppur.

2.The Section Officer
VR Section
High Court
Madras.

+lcc to Mr.S.Vadivel , Advocate SR.No. 33034

+lcc to Mr.Ma.Pa.Thangavel, Advocate SR.No. 32843

C.M.A.No.1427 of 2013
and M.P.No.1 of 2013

A.SK(30.04.2021)

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