

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.319 of 2011 & M.P.No.1 of 2011

(Through Video Conferencing)

M/s. National India Insurance Co., Ltd.,
No.63, Prathakshana Road,
Karur,
No.74-A, Paramathi Road,
Namakkal.

.. Appellant /2nd Respondent

.vs.

1.Shakthivel

... 1st Respondent/Petitioner

2.Vijayakumar

(2nd respondent set exparte before
the Tribunal)

..2nd Respondent/1st Respondent

Prayer.: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.09.2010 made in M.C.O.P.No.118 of 2008 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Namakkal.

For Appellant : Mr. J.Chandran

For R2 : No Appearance

For R1 : Mr.A.R.Suresh

J U D G M E N T

The Insurance company is the appellant in this appeal. It is aggrieved by the impugned Judgment and Decree dated 24.09.2010 passed by the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate) Namakkal in M.C.O.P No.118 of 2008 (hereinafter referred to as the Tribunal)

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,23,928/- to the 1st respondent-claimant as compensation together with interest at 7.5% per annum from the date of claim petition till the date of deposit.

3. The break up of the amount awarded by the Tribunal are summarised below:-

S.No.	Heads	Amount awarded by the Tribunal
1	Permanent disability (1800 x 12 x 16 x 25/100 = 1,92,000)	Rs.1,92,000/-
2	Pain and suffering	Rs. 10,000/-
4	Transport Expenses	Rs. 5,000/-
5	Extra Nourishment	Rs. 10,000/-
6	Medical Expenses	Rs. 6,928/-
Total		Rs.2,23,928/-

4. Aggrieved by the impugned Judgment and Decree, the appellant-Insurance Company has filed the present appeal.

5. The learned counsel for the appellant-Insurance Company submits that the amounts awarded by the Tribunal under different heads are exorbitant. He therefore submits that the impugned Judgment and Decree is required to be interfered and therefore this civil miscellaneous appeal is liable to be allowed.

6. Per contra, the learned counsel for the 1st respondent-claimant submits that the Tribunal has considered the permanent disability based on the evidence of P.W.2-doctor and Ex.P.9 - Disability Certificate and therefore submits that the amount awarded by the Tribunal be confirmed.

7. Heard the counsel for the appellant-Insurance Company and the learned counsel for the 1st respondent-claimant. I have also perused the evidence on record.

8. From the materials available on record, it is seen that the Tribunal has held that the accident occurred due to rash and negligent driving by the driver of the insured lorry belonging to the 2nd respondent. The 1st respondent-claimant had sustained grievous injuries on his chest and fracture of right foot in the backside and second metatarsal bone, as a result of which, there was amputation of a toe. The 1st respondent-claimant has taken treatment as an in-patient for a period of one month and was operated and a screw was inserted to right leg.

9. The injuries suffered however do not indicate that the 1st respondent-claimant has suffered permanent disability or permanent partial disability impacting the earning capacity for ever so as to apply multiplier method for determining the compensation. At the same time, the 1st respondent-claimant would have been out of work for at least 12 months to recover from the injuries. Since the injury suffered by the 1st respondent-claimant would have been excruciating and painful, a sum of Rs.30,000/- towards pain and sufferings. Therefore,

the amount of compensation awarded by the Tribunal is re-quantified as follows:

S.No.	Heads	Amount
1	Injury (25% x 4,000)	Rs.1,00,000/-
2	Loss of Income (Rs.4,000 x 12)	Rs. 48,000/-
3	Pain and suffering	Rs. 30,000/-
4	Transport Expenses	Rs. 5,000/-
5	Extra Nourishment	Rs. 15,000/-
6	Medical Expenses	Rs. 6,928/-
Total		Rs.2,04,928/- rounded off to Rs.2,05,000/-

10. The appellant-Insurance Company is therefore directed to deposit the re-quantified amount of compensation of Rs.2,05,000/- together with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

11. On such deposit, the 1st respondent-claimant is permitted to withdraw the same together with interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal.

12. If the appellant-Insurance Company has deposited any amount in excess of above re-quantified amount of compensation determined by this Court, it is permitted to withdraw the excess amount together with interest accrued thereon, by filing suitable applications before the Tribunal.

13. Accordingly, this civil miscellaneous appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kkd/jen

To

The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Namakkal.

+1cc to Mr.J.Chandran, Advocate, S.R.No. 28757

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and M.P.No.1 of 2011

NRJK (CO)
GN (28/04/2021)