

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A. No. 2572 of 2015

and

M.P. No. 1 of 2015

TATA AIG General Insurance Co. Ltd
Represented by its Branch Manager
Jaya Enclave, Third Floor
1057, Avinashi Road
Coimbatore - 641 018.

... Appellant/2nd Respondent

Vs.

1. Madhu ...1st Respondent/Petitioner

2. K.Karthick ...2nd Respondent/1st Respondent

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 16.03.2015, made in M.C.O.P. No. 3078 of 2013, on the file of Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Ms. C.Harini

For Mr. N.Vijayaraghavan

For Respondents: Mr. C.Munusamy (For R1)

R2 - No appearance

J U D G M E N T

The judgment and decree dated 16.03.2015 passed in M.C.O.P. No. 3078 of 2013 is sought to be quashed in the present Civil Miscellaneous Appeal filed by the appellant /insurance company.

2. The accident occurred on 09.03.2013 at about 14.30 hours and the injured, Mr. Madhu was aged about 41 years. On account of accident, he was sustained injuries of Grade I open fracture shaft of right tibia and abrasion big toe right and he was working as Mason and the Doctor assessed partial permanent disability as 45% and the Tribunal assessed the disability as

45%. The Tribunal fixing the disability as 45% calculated the compensation by applying multiplier.

3. The learned counsel appearing on behalf of the appellant / insurance company mainly contended that the nature of the injury and the application of multiplier taking the disability as 45% is exorbitant and the Tribunal has not considered the fact that the disability is partial permanent disability and 45% is fixed for the same and then the claimant is not entitled for compensation by applying multiplier. In all such cases Rs.4,000/- per percentage is granted, in the event of applying multiplier then as per the guidelines issued by the courts the percentage of disability is to be considered with reference to the whole body not based on the particular part. The 50% itself was assessed by the Doctor not based on the whole body assessment and therefore, the Tribunal has committed an error as 45%. Further, error is that application of multiplier in such cases.

4. The learned counsel appearing on behalf of the respondents /claimant disputed the points by stating that the Tribunal has considered the nature of the injury as well as the surgery undergone by the claimant.

5. In view of the fact that the claimant sustained fracture and undergone surgery, the Tribunal has applied multiplier and granted compensation and therefore, there is no infirmity as such. This Court is of the considered opinion that any method of calculation must have some relevance and consistence. Once the disability is assessed based on the Doctor's assessment, which is not made with reference to the whole body, then the application of multiplier need not be granted. In the event of taking a decision to apply the multiplier then the disability is to be assessed on the whole body basis. Thus, fixing the disability as 45% based on the fixation done by the Doctors as 50% and application of multiplier is not in consonance with the principles and therefore, the appellant raised a ground that such a method leads to grant of exorbitant compensation and not in commensuration with the nature of injuries as well as the treatment undergone by the claimant.

6. This Court is of the considered opinion that as per the judgment of the Supreme Court, the calculation of compensation by multiplier is the best way of award of compensation. However, the assessment of disability is to be made properly with reference to the disability on the whole body. Taking disability in one part and assessing the disability on the higher side and fixing multiplier will lead to award of exorbitant compensation, which is not permissible. Therefore, in the present case, the Doctors assessed 50% disability on the basis

of one part, wherein the claimant sustained injuries. Taking over all assessment of the disability, this Court is inclined to fix the disability as 30%, so as to grant compensation by applying the multiplier. Accordingly, the award of the Tribunal requires to be re-scheduled and the compensation is granted as detailed hereunder:

1. Loss of income (5,500 X 12 X 30/100X24)	Rs.2,77,200/-
2. Pain suffering	Rs. 25,000/-
3. Extra nourishment	Rs. 20,000/-
4. Attender Charges	Rs. 20,000/-
5. Medical Expenses	Rs. 34,000/-
6. Loss of income for three months (5,500X3)	Rs. 16,500/-
7. Loss of amenities	Rs. 25,000/-
Total	Rs.4,17,700/-

Thus, the total compensation is payable to the claimant is Rs.4,17,700/-.

7. The respondent/claimant is entitled for a total compensation of Rs.4,17,700/- along with interest at the rate of 7.5% per annum. The learned counsel appearing on behalf of the appellant-Insurance Company brought to the notice of this Court that the award amount had already been deposited. Thus, the respondent-claimant is permitted to withdraw the modified award amount of Rs.4,17,700/- along with interest at the rate of 7.5% per annum. The balance amount, if any, shall be returned to the appellant-Insurance Company. in this regard. The appellant-Insurance Company is permitted to file an appropriate application before the Tribunal for the withdrawal of the balance amount with accrued interest and payments are to be made through RTGS.

8. Accordingly, the judgment and decreed dated 16.03.2015 passed in M.C.O.P. No. 3078 of 2013 stands modified and accordingly, the CMA No.2572 of 2015 is allowed in part. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

maya

To

1. The Special Sub Judge
Motor Vehicle Accident Claims Tribunal
Krishnagiri.

2.The Section Officer,
V.R Section,
High Court, Madras.

+1cc to Mr.N.Vijayaraghavan, Advocate SR.No.20767

+1cc to Mr.C.Munusamy, Advocate SR.No.20772

C.M.A. No. 2572 of 2015

RR (CO)
GMY (06/05/2021)



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