IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2402 of 2013 and M.P.No.1 of 2013

(Through Video Conferencing)

National Insurance Company Limited,
Guduvallivari,
Vijayawada District,
Andrapradesh .. Appellant/2nd Respondent

.vs.

1.G.Gugan : Respondent/Claimant
2.M.Padmavathy : Respondent/1st Respondent
(2nd Respondent set Exparte before the Tribunal)

Prayer.: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.04.2012 made in M.C.O.P.No.14/2011 on the file of the Motor Accident Claims Tribunal (Fast Track Court No.III) Kallakurichi.

For Appellant : Mr.C.R.Krishnamoorthy
For R1 : Mr.R.Nalliyappan
For R2 : Exparte

J U D G M E N T

The Insurance company is the appellant in this appeal. The appellant Insurance Company is aggrieved by the impugned judgment and decree dated 17.04.2012 passed by the Motor Accidents Claims Tribunal, (Fast Track Court No.III) Kallakurichi in M.C.O.P No.14 of 2011 (Formerly M.C.O.P.No.11/2010)

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.2,25,000/- as compensation together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of payment, to the 1st respondent/claimant. In this appeal, the appellant-Insurance

Company has questioned the quantum of compensation awarded to the 1st respondent/claimant.

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

S.No.	Heads	Amount awarded by the Tribunal
1	Loss of future earning power (Rs.3,000 x 12 x 17 = Rs.6,12,000) Rs.6,12,000 x 35% = Rs.2,14,200/-	Rs.2,14,200/-
2	Pain and suffering	Rs. 10,800/-
	Total	Rs.2,25,000 /-

4. Aggrieved by the impugned order, the Appellant-Insurance Company has filed the present appeal.

5. The 1st respondent was the claimant before the Tribunal. He met with an accident on 16.04.2005 at about 20.00 hrs. In the claim petition, it was stated that while the 1st respondent was riding a bicycle, when a lorry bearing Reg.No.AP/16 TU 0259 belonging to the 2nd respondent and insured with the appellant-Insurance Company, was driven by its driver in a rash and negligent manner at a high speed and knocked the 1st respondent/claimant, as a result of which, the 1st respondent was thrown out from the bicycle and thus, sustained grievous injuries.

6. The learned counsel for the appellant-Insurance Company submitted that the Tribunal erred in fixing compensation by adopting multiplier method. It was submitted that the 1st respondent/claimant was aged about 23 years and was working as a Mason and sustained only a simple injury on the 4th toe of the right foot. It was therefore submitted that the Tribunal ought to have awarded the compensation on 35% disability at Rs.1,000/- per percentage and therefore, restricted the same to Rs.70,000/- (Rs.2,000 x 35) instead of Rs.2,14,200/- by adopting the multiplier method under the aforesaid head.

7. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the 1st respondent-claimant. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

8. The Tribunal had come to the conclusion that the nature of injury suffered by the 1st respondent/claimant resulted in a permanent disability and therefore, has fixed 35% disability for awarding the aforesaid compensation.

9. The facts of the case is that the 1st respondent-claimant was working as a mason. He was aged about 23 years at the time of the accident. He met with an accident. The first respondent sustained the following injuries in the accident:-

i.Lacerated wound and Fracture of right foot
ii.Fracture of 4th and 5th fingers * in the right foot
*toes

10. At the time when the aforesaid order was passed by the Tribunal, the Courts were not applying multiplier while awarding compensation for permanent partial disability. However, it is noticed that the Hon'ble Supreme Court has later recognised the aforesaid method for awarding compensation in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343.

11. In para Nos.12 and 13, the Hon'ble Supreme Court in Raj Kumar v.AjayKumar, (2011) 1 SCC 343 has explained the modalities for determining the compensation. These paragraphs are reproduced below:-

> "12.Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:-
> (i) whether the disablement is permanent or temporary;(ii) if the disablement is permanent, whether it ispermanent total disablement or permanent partial disablement;
> (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.
> If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability

> then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.
>
> 13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or
>
> (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or
>
> (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

12. The fracture of 4th and 5th toes in the foot normally heals without any surgery. It may not result in permanent disability or partial permanent disability. However, P.W.2 doctor has assessed 50% disability while the Tribunal has considered 35% disability to award the compensation.

13. Lacerated wound is merely prone to infection as it is a tear in the issue caused by shearing and takes time to heal if proper medical attention is bestowed. Both the injuries are no doubts painful and can take long time to heal and a person can develop secondary infection and consequently, disabled person. However, the evidence on record does not indicate as permanent disability or partial permanent disability. The injuries would have put the 1st respondent/claimant to lot of pain and put him out of action for months.

14. Considering the above, I am inclined to partially allow this appeal by modifying the compensation. The compensation is therefore re-quantified as follows:-

Heads	Amount
Loss of earning for 12 months (12 x 3000)	Rs.36,000/-
Pain and Sufferings	Rs.50,000/-
Attendar Charges	Rs.15,000/-
Extra Nourishment	Rs.25,000/-
Total	Rs.1,26,000/-

15. Therefore, the appellant-Insurance Company is directed to deposit the re-quantified amount of compensation of Rs.1,26,000/- together with interest at 7.5% from the date of claim petition till the date of such deposit, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this Judgment.

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

17. 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.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kkd/jen

To

The Motor Accidents Claims Tribunal,
(Fast Track Court No.III),
Kallakurichi.

Copy to: The Section Officer,
V.R. Section,
High Court, Madras.

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RSV(CO)
CSR 23.04.2021