

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1912 of 2016
and C.M.P.No.13964 of 2016

National Insurance Company Limited,
Divisional Office, Court Street,
Tiruppur Taluk.

... Appellant/3rd Respondent

Vs.

1.S.Manikandan

...1st Respondent/Petitioner

2.P.Venkidasamy

3.P.Ravichandran

... Respondents 2 & 3/Respondents 1 & 2

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 16.11.2015 passed in MACTOP No.744 of 2013 on the file of the Motor Accidents Claims Tribunal (I Additional District Court), Tiruppur.

For Appellants : Ms.N.B.Surekha

Mr.K.Myilsamy for R1

For Respondents : Mr.N.E.B.Dinesh for R3

R2 - Service Awaited

JUDGMENT

(Delivered by M.M.SUNDRESH., J)

This appeal is preferred by the appellant/Insurance Company laying a challenge on the quantum alone. First respondent is the claimant.

2. Pursuant to the accident occurred on 29.03.2012, the first respondent made a claim in M.C.O.P No.744 of 2013 for a sum of Rs.30,00,000/-. It is the case of the first respondent that he has suffered permanent disability due to the scar on the left parietal region, tenderness apart from facial disfiguration, loss of movement and brain injury. Reliance has been placed on the evidence of P.W2, who is an ortho doctor and who is also an author of Ex.P13. It is the disability certificate indicating the partial permanent disability at 68%.

3. The first respondent has also filed Ex.P11 being the Income Tax return for the assessment years 2008-2009, 2009-2010 and 2010-2011 to substantiate his case with respect to the income earned by him prior to the accident.

4. The Tribunal, while fixing the annual income of the first respondent at Rs.2,00,000/- ,adopted functional disability at 50% and by adding other heads including the medical expenses as per the bills produced, a sum of Rs.23,70,000/- has been awarded.

5. Learned counsel appearing for the appellant submitted that there is no document to show the loss of income after the accident. P.W.2, who is the author of Ex.P13 was not the doctor who examined the first respondent. In any case, the Tribunal committed an error in fixing the functional disability at 50%. There is no material to hold that there was partial permanent disability of 68%. Furthermore, even according to the first respondent, he was only a real estate broker apart from doing brokerage in second waste materials, running poultry farm and doing agricultural operations. Furthermore, there is evidence to show the diminishing income of the first respondent in carrying out the aforesaid avocation. Hence the award of the Tribunal requires interference.

6. Learned counsel appearing for the first respondent submitted that though a sum of Rs.30,00,000/- has been sought for, the Tribunal has awarded only a sum of Rs.23,70,000/-. It rightly took into consideration Ex.P11 - Income Tax returns. The accident is not in dispute so also the injuries suffered. The first respondent suffered head injury and loss of movement. Thus, the appeal will have to be dismissed.

7. We find some force in the submissions made by the learned counsel for the appellant. On perusal of Ex.P13, we find that the partial permanent disability cannot be at 68%. Even otherwise, the corresponding functional disability cannot be 50%. This we hold so after taking into consideration the nature of avocation of the first respondent. There is no sufficient material to hold that there is substantial reduction in the income of the first respondent. The doctor, who has been examined as P.W.2 being the author of Ex.P13, was not the one who treated him.

8. In such view of the matter, we are of the view that the Tribunal ought to have fixed the partial permanent disability at 35%. Accordingly, a sum of Rs.13,23,000/- has been fixed towards loss of earning power. We are not inclined to interfere with the amounts awarded by the Tribunal under the other heads. However, considering the fact that the first respondent is an injured

person, the amount awarded by the Tribunal towards pain and suffering is increased to Rs.77,000/-. Accordingly, we arrive at the final compensation payable at Rs.19,00,000/-.

9.The appellant/ Insurance Company is directed to deposit the compensation amount awarded by this Court along with proportionate interest, less the amount if any already deposited, to the credit of M.A.C.T. O.P. No.744 of 2013 on the file of the Motor Accidents Claims Tribunal (I Additional District Court), Tiruppur within a period of eight weeks from the date of receipt of a copy of the judgment.

10.We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the claimant's bank account within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

11. Accordingly, the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected miscellaneous application is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi
To

The Motor Accidents Claims Tribunal,
(I Additional District Court),
Tiruppur.

+1 CC to Mr.K.Myilsamy, Advocate sr 93
+1 CC to M/s. N.B. Surekha, Advocate sr 97
+1 CC to Mr.V. Nicholas, Advocate sr 117.

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RSI (CO)
SP(24/08/2020)