

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.12.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3764 of 2012

&

M.P.No.1 of 2012

National Insurance company Limited,  
1<sup>st</sup> Floor, R.P.R.Buildings,  
No.157, Karamadi Road,  
Mettupalayam,  
Coimbatore District. .... Appellant/ 2nd Respondent

vs.

1.N.Pazhaniswamy ....1st Respondent/Petitioner  
2.S.Ramesh ....2nd Respondent/ 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.227 of 2007 dated 30.04.2008 on the file of the Motor Vehicle Accident Claims Tribunal, Principal Subordinate Judge, Gobichettipalayam.

For Appellant : Mrs.N.B.Surekha

For Respondent 1 : Mr.K.J.Sivakumar

For Respondent 2 : No appearance

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the insurance company challenging the quantum of compensation awarded by the Tribunal under the impugned award dated 30.04.2008 passed by the Motor Accident Claims Tribunal (Principal Subordinate Judge, Gobichettipalayam) in MCOP.No.227 of 2007.

2. It is the contention of the Appellant that the compensation awarded by the Tribunal under the impugned award is excessive and it has to be reduced.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

| Heads                 | Award Amount<br>(Rs.)                                             |
|-----------------------|-------------------------------------------------------------------|
| Loss of earning power | 2,62,300/-<br>(12,416 - $1/3 \times 12 \times 11 \times 24/100$ ) |
| Transportation        | 1,700/-                                                           |
| Extra nourishment     | 5,000/-                                                           |
| Pain and suffering    | 20,000/-                                                          |
| Medical Expenses      | 3,000/-                                                           |
| Total                 | 2,92,000                                                          |

The Tribunal has committed a calculation error while assessing the total compensation payable to the first respondent/claimant. The total compensation under the impugned award works out to only Rs.2,92,000/- and not Rs.2,92,100/-.

4. According to the Appellant, the Tribunal has erroneously applied multiplier method while assessing the disability compensation. It is their case that the first respondent/claimant was admitted in the hospital only for two days and therefore, multiplier method ought not to have been adopted. It is also their contention that the compensation awarded by the Tribunal under various other heads is also excessive and disproportionate to the nature of injuries sustained by him.

5. Before the Tribunal, the first respondent/claimant has filed documents which were marked as Exhibits and three witnesses were examined on his side namely, he himself as PW1, the Doctor who examined him as PW3 and an eye-witness to the accident PW5. On the side of the Appellant insurance company, only one document was filed which were marked as Ex.R1 and no witness was examined.

6. Admittedly, the first respondent/claimant sustained the following injuries as a result of the accident caused by a vehicle insured with the appellant namely (a) injury on the right humerus (b) injury on the right hand, (c) injury on the head, left elbow and (d) injury on both knees. As seen from the injuries, the first respondent/claimant has not sustained any fracture or any major head injuries.

7. It is also not in dispute that he was hospitalised only for a period of two days between 30.12.2006 to 01.01.2007, as seen from the discharge summary Ex.P6. While that be so, the Tribunal without appreciating the evidence available on record with regard to the nature of injuries sustained by the first respondent/claimant has adopted the multiplier method instead of assessing the disability compensation based on percentage basis. The multiplier method is generally adopted only in cases where the injuries sustained by accident victim are very grievous in nature which have impacted them from doing their regular work for a long period of time and that too, only in cases, where the period of hospitalisation is long.

8. In the case on hand, it is an admitted fact that the first respondent/claimant has not sustained any fracture in any part of his body and the head injury sustained by him is also not a serious nature and he has also been hospitalised only for a period of two days between 30.12.2006 and 01.01.2007. This being the case, the Tribunal as observed earlier ought not to have applied the multiplier method while assessing the disability compensation. Therefore, this court sets aside the finding of the Tribunal with regard to the assessment of loss of earning power at Rs.2,62,300/- by adopting the multiplier method and instead assesses the disability compensation on percentage basis. The accident happened on 30.12.2006. This Court, after giving due consideration to the year of the accident and the nature of the injuries and the avocation of the first respondent/claimant and his age which has not been disputed by the Appellant/insurance company, before the Tribunal assesses the disability compensation at Rs.72,000/- calculated at Rs.3,000/- per percentage of disability for 24% disability as assessed by the Doctor which has also not been disputed by the Appellant insurance company. Accordingly, the loss of earning power assessed by the Tribunal at Rs.2,62,300/- is set aside and the disability compensation is assessed at Rs.72,000/- calculated at Rs.3,000/- per percentage of disability for 24% disability by this Court.

9. The first respondent/claimant was an office assistant in Taluk office. The Tribunal under the impugned award has not awarded any compensation towards loss of income suffered by him during the period of his treatment for the injuries sustained by him due to the accident. After giving due consideration to the nature of injuries sustained by the first respondent/claimant, this Court awards a sum of Rs.49,664/- as compensation for the loss of income during the period of his treatment which is quantified at four months calculated at Rs.12,416/- per month as per the salary certificate Ex.A21.

10. Insofar as the compensation awarded by the Tribunal towards pain and suffering, transportation, extra nourishment and medical expenses at Rs.20,000/-, Rs.1,700/-, Rs.5,000/- and Rs.3,000/- respectively are concerned, the same in the considered view of this Court is low and it has to be enhanced to Rs.25,000/-, Rs.5,000/-, Rs.8,000/- and Rs.10,000/- respectively.

11. The Tribunal has also not awarded any compensation towards attender charges and loss of amenities which the Appellant/claimant is legally entitled to and the same is fixed by this Court at Rs.15,000/- and Rs.15,000/- respectively.

12. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified and reduced in the following manner:

| Heads                                             | Amount awarded by the Tribunal<br>(Rs.)                           | Modified Award Amount<br>(Rs.) |
|---------------------------------------------------|-------------------------------------------------------------------|--------------------------------|
| Loss of earning power                             | 2,62,300/-<br>(12,416 - $1/3 \times 12 \times 11 \times 24/100$ ) | ---                            |
| Loss of income during the period of his treatment | ---                                                               | Rs.49,664/-                    |
| Disability compensation                           | ---                                                               | 72,000/-<br>(3,000 x 24)       |
| Transportation                                    | 1,700/-                                                           | 5,000/-                        |
| Extra nourishment                                 | 5,000/-                                                           | 8,000/-                        |
| Pain and suffering                                | 20,000/-                                                          | 25,000/-                       |
| Medical Expenses                                  | 3,000/-                                                           | 10,000/-                       |
| Attender charges                                  | ---                                                               | 15,000/-                       |
| Loss of amenities                                 | ---                                                               | 15,000/-                       |
| Total                                             | 2,92,000                                                          | 1,99,664/-                     |
| Rounded off                                       | 2,92,000                                                          | 2,00,000/-                     |

Conclusion:

13. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.2,00,000/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.227 of 2007 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest lying to the credit of MCOP.No.227 of 2007 to the first respondent claimant through RTGS within a period two weeks thereafter. No cost. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,  
Gobichettipalayam

Copy to

The Section Officer,  
VR Section, High Court,  
Chennai.

1 cc to M/s.N.B.Surekha, Advocate,Sr. 26490

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RSK (CO)

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