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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.M.A. No. 347 of 2017

National Insurance Company Limited,
1st Floor, No.1631-1/B, Salem,
Bhavani Main Road,
Sankagiri,
Salem District.

... Appellant/2d Respondent

Versus

1.Dhinesh

... I Respondent/Petitioner

2.S.Deepak

... II Respondent/I Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.10.2013, made in M.C.O.P. No.724 of 2012 on the file of the Motor Accident Claims Tribunal (Additional District Court, Namakkal).

For Appellant : Mr. K.Padmanabhan

For Respondent : 1 : Mr. Ma.P.Thangavel

2 : Ex-parte

JUDGMENT

This appeal is preferred by the insurance company as against the quantum of compensation awarded by the Motor Accident Claims Tribunal (Additional District Court, Namakkal) in M.C.O.P. No.724 of 2012.

2. The accident took place on 15.02.2012 when the first respondent was travelling in his Maruti Van. It is admitted that at the time of accident, the driver of the van drove the vehicle in a rash and negligent manner due to which the said van was capsized. Though it is stated that the claimant / injured was moved to a private hospital for better treatment and for surgery, it is admitted that no evidence was let in to show that the surgery was required for treating the injured.



3. It is admitted that the first respondent claimant was 23 years at the time of accident. He was pursuing his B.Com in a private college at Namakkal. Though in the claim petition it is stated that the claimant suffered multiple injuries and that the disability was permanent, the claimant has not adduced any reliable evidence to show that the disability was permanent and adequate compensation should be awarded towards loss of future earning capacity.

4. It is to be seen that the Tribunal after considering all the evidence, came to the conclusion that a sum of Rs.2,20,000/- can be awarded towards loss of future earning capacity. Having regard to the nature of injury, the Tribunal rightly observed that the fracture was minor and it was cured. No permanent disability can be ascertained from the evidence adduced before the Tribunal. The Tribunal has awarded a sum of Rs.80,000/- towards disability and further a sum of Rs.2,52,000/- towards loss of future earning capacity. The permanent disability assessed as per the evidence was 40%. However, the Tribunal has not discussed the functional disability of the injured respondent. The first respondent claimant was just a student and he was not doing any permanent job or avocation. It is not proved before the Tribunal or by any other evidence before this Court that the injured has suffered permanent disability so that this Court can hold that his chances of moving around for getting proper employment are difficult. In these circumstances, this Court is unable to accept allowing any amount beyond Rs.80,000/- towards disability. The claimant got cured and no disability was continuing after treatment. Hence, the award of the Tribunal for a sum of Rs.2,52,000/- with regard to the loss of earning capacity apart from granting Rs.80,000/- towards disability is improper. However, taking into consideration the fact that the claimant is a student and that some physical discomfort is possible, this Court, instead of awarding a sum of Rs.80,000/- towards disability, is inclined to increase the amount towards loss of future earning capacity.

5. This Court is inclined to modify the award by reducing the compensation to Rs.3,60,400/-. The amount of compensation payable to the first respondent injured is reduced from Rs.5,60,400/- to Rs.3,60,400/-. The appellant is directed to withdraw the excess amount that has been deposited, if any, pursuant to the award of the Tribunal in M.C.O.P. No.724 of 2012. The first respondent is also permitted to withdraw the amount as per the order of this Court.



6. Accordingly, this Civil Miscellaneous Appeal is allowed and the award of Motor Accident Claims Tribunal (Additional District Court, Namakkal) in M.C.O.P. No.724 of 2012, is modified to the extent indicated above. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

bkn

To

The Additional District Court, Namakkal.
(Motor Accident Claims Tribunal)

Copy To

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

+1cc to Mr.Thangavel, Advocate, S.R.No.41677

C.M.A. No.347 of 2017

MG(CO)
GN(18/11/2021)