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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.02.2021
PRONOUNCED ON : 17.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1450 of 2016
and
CMP.Nos.11130 of 2016

National Insurance Company Limited,
represented by its Branch Manager,
78, Thiruvengkatasamy Chetty Street,
Erode Town, Erode District. ...Appellant/3rd respondent

Vs.

1.K.Komarasamy @ Kumarasamy
2.K.M.Karuppasamy
3.S.Ponnusamy ... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree dated 12.03.2012 made in O.P.No. 365 of 2009 on the file of the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court No - 2), Gobichettipalayam.

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.MA.P.Thangavel

For R2 & R3 : Mr.A.Saravanan

JUDGMENT

(This case has been heard through video conference)

The Insurance Company is the appellant herein and the first respondent herein is the claim petitioner.

2.The appellant/Insurance Company has filed this appeal to challenge the award passed by the Motor Accident Claims Tribunal, learned Additional District Judge, Fast Track Court No.II, Gobichettipalayam, in M.C.O.P.No.365 of 2009, on the ground of liability, contributory negligence and quantum.



3. Brief facts of the case are as follows:

(a) The averments in the claim petition and the version of PW1 are to the effect that while the claim petitioner was carrying four plastic pots of water and was trying to cross the road from left to right, a two wheeler TVS Mopped bearing registration No. TN-33-M-0266 driven by its driver viz., the second respondent herein in rash and negligence manner hit against the claim petitioner and thereby, he sustained injuries.

(b) Therefore, the claim petitioner has filed a petition in MCOP.No.365 of 2009, on the file of the Motor Accidents Claims Tribunal, learned Additional District Judge, Fast Track Court No.II, Gobichettipalayam. The Tribunal has held that the accident has occurred due to the rash and negligence driving of the driver of the TVS Mopped viz., second respondent and that the claim petitioner also contributed negligence on his part to the accident and thereby, fixed the negligence at 50% each and awarded a sum of Rs.9,78,940/- in which 50% comes to Rs.4,89,470/- and the said award is under challenge.

4. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the respondents and perused the records placed on record.

5. The learned counsel for the appellant/Insurance Company would contend that the contributory negligence has been rightly arrived at by the Tribunal. However, Ex.P9/salary certificate, which was issued only in the year 2010 was accepted while the accident is of the year 2007. Furthermore, adoption of multiplier method for the partial permanent disability is not warranted and also stated that the claimant, even after the injury and his treatment thereof, is again working in the very same Tamilnadu Electricity Board and there is no salary deduction or denial of promotion and therefore, there cannot be any loss of earning capacity in the manner as it is intended under the Motor Vehicles Act. The next contention of the learned counsel for the appellant is that since the implants have been removed after the second surgery, future medical expenses is not warranted.

6. Per contra, Mr.Ma.Pa. Thangavelu, learned counsel appearing for the claim petitioner/first respondent herein would contend that a lesser multiplier can be granted while computing the loss of income and relied upon the decision reported in (2005) 1 CTC 38 - (United India Insurance Company Ltd., Branch Officer, 146, N.Kumar Complex, Tiruchengode Vs. Veluchamy and another). Further, he would contend that the Tribunal has not



awarded any compensation under the heads of pain and suffering, attended charges, Nutrition and extra nourishment, transportation & loss of amenities.

7. The learned counsel for the claimant/first respondent herein would also draw my attention to the evidence of P.W.2/Doctor. After the accident, the left ankle was restricted by 22 degrees and upward motion was also restricted by more than 50%. Consequently, Ex.P17/Disability Certificate, it was clearly mentioned that the permanent disability is 40% and in view of the restriction movement as assessed by P.W.2, the earning capacity in respect of the claimant is restricted and hence made a submission in support of the adoption of the multiplier method.

8(a). On a perusal of the evidence of the injured/PW1 coupled with the evidence of documentary evidence viz., Ex.P1/FIR, Ex.P2/Charge Sheet, Ex.P3/ Rough Sketch, it goes to show that at 07.00 p.m., in the middle of the road the claim petitioner was carrying four plastic pots of water, without noticing of coming vehicle and hence, the Tribunal has rightly come to the conclusion that both the rider of the two wheeler as well as the injured/claim petitioner has contributed to the accident and accordingly, fixed the negligence at 50% on each.

8(b). After perusing the answer elicited in the cross-examination of PW1/claim petitioner coupled with the documentary evidence of Ex.P3/Rough Sketch, this Court finds that the finding rendered by Tribunal regarding contributory negligence, on both the parties at 50% is just and the same does not suffer from any illegality and irregularity warranting interference at this appellate stage. The contributory negligence fixed by the Tribunal is hereby confirmed.

9. On the point of quantum of compensation, taking into consideration of the fact that the injured was working as a Junior Engineer in Tamil Nadu Electricity Board and after the treatment he has re-joined in the duty for the very same post and also granted promotion therefor and further there is no salary deduction nor denial of any promotion, this Court finds that the contention put forward by the appellant herein/Insurance Company that there cannot be any loss of earning capacity in the manner as it is intended under the Motor Vehicle Act and the multiplier method adopted by the Tribunal is erroneous and on the factual position and the record available in the form of evidence, the finding of the Tribunal that the claim petitioner is entitled for adopting the multiplier method



is erroneous and the same is vacated. The salary certificate was issued in the year 2010 and he was working in the year 2007 in the very same category and therefore, the quantum of salary fixed by the Tribunal does not warrant any interference.

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10. On a perusal of the evidence of PW2/Doctor coupled with the documentary evidence viz., Ex.P17/Disability Certificate, this Court finds that after the accident, the left ankle was restricted to 22 degrees and the upward motion is also restricted by more than 50 degrees, assumes significance. Furthermore, as per Ex.P17/disability certificate, permanent disability was fixed at 40% and it does not demonstrated that due to the restriction of movement he has lost the earning capacity, since, the claim petitioner has re-joined as a junior engineer, as he was working before the accident and there was no denial of permission on the account of injuries or the disability. Hence, this Court finds that 50% disability fixed by the Tribunal is just and the same is hereby confirmed, i.e., 50% x 2,000/- = 1,00,000/-

11. The claim petitioner is entitled for a sum of Rs.34,575/- as per Ex.P10/Medical Bill, Rs.20,322/- as per Ex.P.11/Medical Bill, Rs.6,114/- as per Ex.P13/Medical Bill, Rs.7,107/- as per Ex.P14/Medical Bill, Rs.7,340/- as per Ex.P15/Medical Bill, totaling to a sum of Rs.75,458/-. Hence, the claim petitioner is entitled to a sum of Rs.75,458/- under the head of Medical Bills.

12. As per Ex.P8/discharge summary, on 07.11.2007 and 20.01.2008, the claim petitioner had underwent two surgeries. In other words, the claim petitioner has spent 30 days as an inpatient in the hospital and hence, he is entitled to a sum of Rs.25,000/- towards pain and suffering; Rs.15,000/- towards attender charges; Rs.30,000/- towards Nutrition and extra nourishment; Rs.30,000/- towards Transportation charges and Rs.30,000/- towards loss of amenities. Further, the petitioner is entitled for loss of income during the period of treatment and the same is calculated as 3 X 18,000 = Rs.54,000/- and the same are shown as under:

Sl. No.	Head	Amount awarded by the Tribunal (in Rs.)	Amount granted by this Court (in Rs.)
1.	Disability	9,34,042/-	1,00,000/-
2.	Transportation Charges		30,000/-



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Sl. No.	Head	Amount awarded by the Tribunal (in Rs.)	Amount granted by this Court (in Rs.)
3.	Loss of amenities		30,000/-
4.	Nutrition and extra Nourishment		30,000/-
5.	Pain and suffering		25,000/-
6.	Attender Charges		15,000/-
7.	Loss of income during the period of treatment		54,000/-
8.	Medical Expenses	44,898/-	75,458/-
9.	Total	9,78,940/-	3,59,458/-

The claim petitioner is entitled to get 50% (as per contributory negligence) of the award amount viz., Rs.1,69,729/-. Hence, compensation awarded by the Tribunal is modified from Rs.4,89,470/- to Rs.1,79,729/- (Rupees One Lakh Seventy Nine Thousand Seven Twenty Nine Only).

13. In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent indicated as above.

(b) The appellant/Insurance Company is directed to deposit modified award amount viz., Rs.1,79,729/- to the credit of MCOP.No.365 of 2009, on the file of Motor Accidents Claims Tribunal, learned Additional District Judge, Fast Track Court No.II, Gobichettipalayam, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(c) The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the claim petitioner is entitled to take the compensation amount as awarded by this Court, less the amount already withdrawn, if any.

(e) The claim petitioner shall pay necessary Court fee, if any.



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(f) No costs. Consequently, connected Miscellaneous
Petition is closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

Dua

To

- 1.The Motor Accidents Claims Tribunal,
Additional District Judge/Fast Track Court No - 2,
Gobichettipalayam.
- 2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No.28308

C.M.A.No.1450 of 2016

RGN(CO)
GN(24/01/2022)