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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.M.A.No.3014 of 2013

and

M.P.No.1 of 2013

The National Insurance Company Limited,
Kumaran Illam, Green field,
Uthagamandalam, Nilgiris District.

...Appellant/
2nd Respondent

Versus

1. O.B.Ranjini
S/o.J.Bheman

2. S.Kuberan
S/o.Sellan

...Respondents/Petitioner/
1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment passed in MACT.O.P.No.75 of 2011, dated 10.01.2013, on the file of the Motor Vehicle Accidents Claims Tribunal, 3rd Additional District Court, Erode at Gobichettypalayam.

For Appellant : Ms.N.B.Surekha
For Respondents : Mr.MA.P.Thangavel [for R1]
R2 - Notice served

J U D G M E N T

The Appellant/Insurance Company has filed this appeal against the judgment and decree dated 10.01.2013 made in M.A.C.T.O.P.No.75 of 2011 on the file of the Motor Vehicle Accidents Claims Tribunal, III Additional District Court, Erode at Gobichettypalayam.

2. The learned counsel appearing for the appellant submits that the second respondent was set exparte.

3. The case of the first respondent/claimant is as follows:

On 06.04.2011 at about 20.00 hours, while the first respondent/claimant was riding his motorcycle bearing Registration No.TN-43-B-8992 on the Kothagiri to Berakani Main



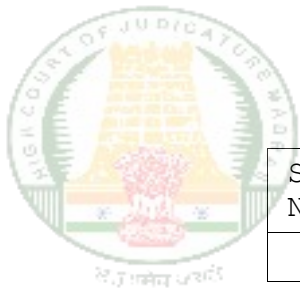
Road near Madiyada Koil on the extreme left side of the road, a Jeep bearing Registration No.TN-43-A-2055, belonging to second respondent and insured with the appellant insurance company, which came in the opposite direction, in a rash and negligent manner and dashed against the first respondent/claimant, due to which the first respondent/claimant sustained grievous injuries on the tongue, both elbows, left leg, chest and injuries all over the body. Immediately, the first respondent/claimant was admitted at Government Hospital, Kotagiri and for further treatment at Ganga Hospital. The first respondent/claimant was working as a mason and was earning a sum of Rs.9,000/- p.m. Since the first respondent/claimant suffered permanent disability, he is not able to carry on his avocation as he was doing before. Hence, the first respondent/claimant filed a claim petition seeking compensation in a sum of Rs.10,00,000/- for the injuries sustained by him in the accident.

4. Resisting the claim made by the first respondent/claimant, the appellant insurance company has filed a detailed counter statement inter alia stating that the accident did not occur in the manner as projected by the first respondent/claimant. They had also denied the age, occupation and income of the first respondent/claimant. Thus, they prayed for dismissal of the claim petition.

5. Before the Tribunal, to prove his case, the first respondent/claimant was examined as PW-1 and one Dr.Thambiraj was examined as PW-2 and 13 documents were marked as Exs.P1 to P13. On the side of appellant Insurance Company, none were examined and no exhibits were marked.

6. On appreciation of materials, the Tribunal arrived at a finding that the accident had occurred due to the rash and negligent driving of the Jeep bearing Registration No.TN-43-A-2055 and held that the appellant Insurance Company, as insurer of the said vehicle, is liable to pay compensation. Accordingly, the Tribunal awarded a sum of Rs.3,22,793/- as compensation. The break-up details are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income (2970 * 12 * 15 * 55/100)	2,94,030/-
2.	Medical Bills	18,263/-
2.	Future Medical expenses	5,000/-
3.	Pain and suffering and nutrition	5,000/-
4.	Loss of clothes	500/-



Sl. No.	Compensation awarded under the head	Amount (in Rs.)
	Total	3,22,793/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of claim petition till the date of realization. Challenging the same, the appellant Insurance Company has filed the present appeal.

7. Heard the learned counsel for appellant and the learned counsel appearing for second respondent Insurance Company.

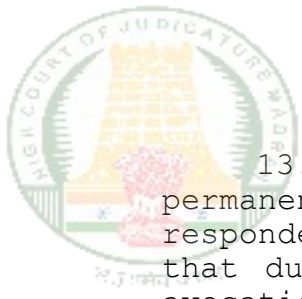
8. Learned counsel for the appellant Insurance Company contended that the first respondent/claimant has suffered 55% disability in the accident. The Tribunal has awarded compensation by adopting multiplier method. According to the appellant Insurance Company multiplier cannot be adopted, in the present case, to award the compensation to the appellant. According to the learned counsel for the appellant/Insurance Company, the first respondent/claimant has not placed any material or evidence to establish that due to the said injury, there is a loss of future prospects and income. Unless the first respondent/claimant has established that due to the injuries sustained in the accident, he has suffered loss of future prospects, the application of multiplier is unwarranted.

9. Learned counsel fairly submitted that a reasonable compensation amount may be fixed based on the disability suffered by the first respondent/claimant. Therefore, the said award passed by the Tribunal is liable to be modified.

10. Learned counsel for the first respondent/claimant submitted that the first respondent/claimant has suffered 55% disability in the accident and he was unable to walk, stand and do work due to the accident. The first respondent/claimant was a mason and he is suffering due to the said disability. In fact, the compensation awarded by the Tribunal is very much on the lower side and hence, he seeks enhancement of compensation.

11. This Court has considered the rival submissions and perused the materials on record.

12. On perusal of the materials, this Court finds that the first respondent/claimant suffered 55% disability as per the evidence of PW-2, Doctor. The said assessment was accepted by the Tribunal. There is no dispute with regard to the permanent disability suffered by first respondent/claimant. The question that arises for consideration is that whether the application of multiplier, in the present case, is justifiable?



13. The first respondent/claimant had suffered 55% permanent disability in the accident. The first respondent/claimant had not adduced any evidence to establish that due to permanent disability he is unable to carry on his avocation as he was doing before and hence, he suffers loss of income. Therefore, the first respondent/claimant has not established before the Tribunal that his future prospects is very much affected due to the injuries suffered in the accident.

14. As the first respondent/claimant has not established that due to permanent disability suffered by him, he is unable to carry on his avocation, this Court is of the view that application of multiplier is unwarranted. At the same time, this Court is also of the view that the first respondent/claimant is entitled to receive a just and reasonable compensation for the injuries sustained by him in the accident. Taking into consideration the decision of the Honourable Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and Another [2011 (1) SCC 343], this Court is of the view that the present case does not warrant application of multiplier as the first respondent/claimant has not established that he suffers loss of future prospects and finds it difficult to carry on his avocation.

15. However, considering the percentage of disability suffered by the first respondent/claimant i.e. 55%, this Court is of the view that it would be just and reasonable to grant Rs.3,000/- per percentage of disability. Accordingly, the compensation payable under the head permanent disability would be Rs.1,65,000/-. This Court is also of the view that the amount awarded under the other heads is also very meagre and the same needs to be enhanced.

16. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	55% of Disability	1,65,000.00
2.	Medical Expenses	18,263.00
3.	Pain and suffering	25,000.00
4.	Attender Charges	15,000.00
5.	Amenities	20,000.00
6.	Loss of Income for 3 months of Rs.6,000/-	18,000.00
7.	Transportation charges	10,000.00
8.	Future Medical Expenses	20,000.00



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
9.	Extra Nourishment	10,000.00
	Total	3,01,263.00

17. In the result, this Civil Miscellaneous Appeal is partly allowed, the total compensation of Rs.3,22,793/- awarded by the tribunal is reduced to Rs.3,01,263/- round off to Rs.3,00,000/- along with interest at the rate of 7.5% per annum.

18. The appellant Insurance Company shall deposit the modified compensation amount, as awarded by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of 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. On such deposit being made, the first respondent/claimant is permitted to withdraw the modified amount by filing appropriate application before the tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

bri

To

1. The Motor Vehicle Accidents Claims Tribunal,
III Additional District Court,
Erode at Gobichettipalayam.

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

+lcc to M/s.N.B.Surekha, Advocate, S.R.No.10977
+lcc to M/s.Ma.P.Thangavel, Advocate, S.R.No.10955

C.M.A.No.3014 of 2013
and M.P.No.1 of 2013

AK[co]
NSK 15/09/2021