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In the High Court of Judicature at Madras

Dated : 21.01.2021

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The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A.No.1714 of 2009

and

M.P.No.1 of 2009

National Insurance Co. Ltd.,
rep. by its Branch Manager,
37/2E, Salem Main Road,
Mettur.

...Appellant/2nd Respondent

..Vs..

1.Rajan

...1st Respondent/Claimant

2.M.Thangavel

...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Additional District Judge (FTC-V), (MACT), Coimbatore at Tiruppur in M.A.C.T.O.P. No.1213 of 2006 dated 13.08.2008.

For Appellant : Mrs.R.Sree Vidhya

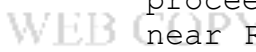
For Respondent-1 : Mr.S.S.Swaminathan

R2 : NA

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal / learned Additional District Judge (FTC-V), (MACT), Coimbatore at Tiruppur in M.A.C.T.O.P.No.1213 of 2006 dated 13.08.2008, the Insurance Company has preferred this appeal.

2. This matter is heard through Video Conferencing today. Heard Mr.R.Sree Vidhya, learned counsel appearing on behalf of the Insurance Company and Mr.S.S.Swaminathan, learned counsel for the first respondent.



3. The brief facts of the case is as follows:-

a) On 27.02.2006 at about 1.30 hrs when the claimant was proceeding in his TVS 50 Moped in Somanur Karumathampatty road near R.G. Bakery, the lorry bearing registration No.TN-28-X-4456 which came in the opposite direction, driven by its driver/the second respondent herein in a rash and negligent manner dashed against the claimant causing grievous injuries. The claimant, who had suffered 35% disability filed the claim petition, claiming a sum of Rs.5 lakhs as compensation.

b) Before the Tribunal, the witnesses P.W.1 to P.W.3 are examined and Exs.A1 to A7 were marked on the side of the claimant. The Tribunal after analysing both the oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the lorry which was insured with the appellant herein and directed the Insurance Company to pay a sum of Rs.2,52,805/- with 7.5% interest p.a. from the date of petition till the date of payment to the claimant.

c) The break-up details of the award passed by the Tribunal is as follows:-

Serial No.	Heads	Amount (Rs.)
1	Loss of earning power	1,63,800
2	Medical expenses	66,505
3	Transportation	1,500
4	Loss of income during treatment period	3,000
5	Pain & sufferings	15,000
6	Extra nourishment	3,000
	Total	2,52,805

4. Aggrieved over the same, the appellant Insurance Company has challenged the award passed by the Tribunal in the present appeal.

5. Having considered the rival submissions of the learned counsel on both sides and perused the materials available on record.

6. The learned counsel for the appellant/Insurance Company submitted that the appeal has been filed mainly on the ground



that the multiplier method adopted by the Tribunal is not correct and the same is unsustainable and contended that the Tribunal had erred in adopting multiplier method for arriving at the loss of earning power as the case pertains to injury and requires interference by this Court. She also submitted that the Tribunal ought to have awarded the said head by awarding percentage for the disability suffered by the claimant at the accident. She further submitted that the amounts awarded under the other heads are also excessive and warrants interference.

7. On the other hand, the learned counsel for the respondent claimant submitted that the Tribunal has rightly fixed the compensation to the claimant. He further submitted that the amounts awarded by the Tribunal on the other heads are very meagre and seeks enhancement of compensation.

8. The learned counsel for the appellant fairly submits that this Court can fix a reasonable amount under the other heads.

9. Taking into account, the submission made by the learned counsel for the appellant in regard to adoption of multiplier method, as rightly contended by the learned counsel for the appellant, the Tribunal ought not to have adopted multiplier method as the present case on hand pertains to injury. Hence this Court accepts and holds that the percentage of permanent disability has to be taken into account for awarding compensation under the head 'Loss of income due to permanent disability'. Considering the injuries sustained by the claimant in the accident that took place on 27.02.2006, P.W.2/ Dr.Senthil Kumar in his evidence has deposed that the claimant had suffered 38% disability which is evidenced through disability certificate Ex.A6, hence, the same is accepted by this Court. Therefore, by awarding Rs.2000/- per percentage for the disability, a sum of Rs.76,000/- has been granted by this Court towards loss of income due to permanent disability. In the absence of any materials to prove the monthly income of the claimant as he was a coolie, this Court fixes the notional monthly income at Rs.3000/- per month and taking into account, the nature of injuries sustained by him in the accident, he is entitled to receive a sum of Rs.18,000/- (3000 x 6) for loss of income during the treatment period of 6 months, as against the amount of Rs.3000/- awarded by the Tribunal under the said head as the same seems to be meagre. As per Ex.A5 series/medical bills, a sum of Rs.66,505/- granted by the Tribunal towards medical expenses is accepted by this Court. Since the claimant had suffered head injury, a sum of Rs.15,000/- awarded by the Tribunal towards pain and sufferings is enhanced to Rs.25,000/-. Likewise, this Court is of the view that the injuries suffered by the claimant are grievous in nature, a sum of Rs.10,000/- is granted towards extra nourishment as against Rs.3000/- awarded

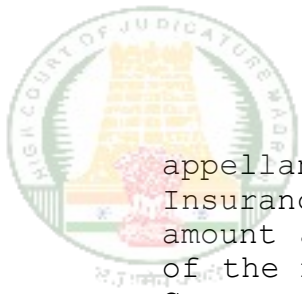


by the Tribunal. No amount has been awarded towards loss of amenities and attendant benefits by the Tribunal and hence, a sum of Rs.10,000/- and Rs.12,000/- respectively are granted by this Court under the said heads. Only a meagre sum of Rs.1500/- has been granted by the Tribunal towards transportation charges, which is enhanced to Rs.10,000/- by this Court. In fine, a sum of Rs.2,27,505/- has been arrived by this Court as compensation to the claimant which is rounded off to Rs.2,30,000/- as against the compensation of Rs.2,52,805/- awarded by the Tribunal.

10. The break-up details of the modified compensation amount granted by this Court is as follows:-

Serial No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount (Rs.) granted by this Court
1	Loss of income due to permanent disability	1,63,800 (loss of earning power)	76,000
2	Loss of income during treatment period	3,000	18,000
3	Medical expenses	66,505	66,505
4	Pain & sufferings	15,000	25,000
5	Transportation	1,500	10,000
6	Attendant benefits	-	12,000
7	Extra nourishment	3,000	10,000
8	Loss of amenities	-	10,000
	Total	2,52,805	2,27,505/- rounded off to 2,30,000/-

11. Considering the facts and circumstances of the case, this Court modifies the award amount passed by the Tribunal to Rs.2,30,000/- from Rs.2,52,805/- with interest at the rate of 7.5% p.a. to the claimant from the date of petition till the date of payment. It is submitted by the learned counsel for the



appellant that the entire award amount has been deposited by the Insurance Company and sought permission to withdraw the excess amount as per the modified award amount of this Court. In view of the modification of the award amount, the appellant/Insurance Company as well as the claimant are entitled to withdraw their appropriate amount if any, lying in the credit of M.C.O.P.No.1213 of 2006, Additional District Court (FTC-V), MACT, Coimbatore at Tiruppur, on filing appropriate petition before the Tribunal.

12. In the result, the Civil Miscellaneous Appeal is allowed in part. Consequently, connected Miscellaneous petition is closed. There shall be no orders as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1. The Additional District Judge (FTC-V),
(The Motor Accident Claims Tribunal),
Coimbatore at Tiruppur.
2. The Record Keeper,
V.R. Section,
High Court, Madras.

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.3770

C.M.A.No.1714 of 2009
and M.P.No.1 of 2009

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