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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.1381 of 2020 and 3481 of 2021
and
C.M.P.No.20099 of 2021

C.M.A.No.1381 of 2020

Arulmani

... Appellant/Petitioner

Vs.

1.Selvam

2.The National Insurance Co. Ltd.,
Branch at 73, Perundurai Road,
Erode District - 638 011.

3.Kannan

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree in MCOP No.542 of 2017 dated 03.02.2020 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge, Erode.

For Appellant : Mr.T.S.Arthanareeswaran for
M/s C.Paraneedharan

For Respondents : Mrs.N.B.Sureka (for R2)

C.M.A.No.3481 of 2021

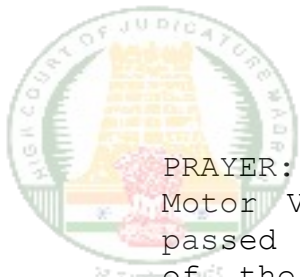
The National Insurance Company Limited,
Branch at 73, Perundurai Road,
Erode District - 638 011.

... Appellant/2nd Respondent

Vs.

1.Arulmani
2.Selvam
3.Kannan

... 1st Respondent/Petitioner
... 2nd Respondent/1st Respondent
... 3rd Respondent/2nd Respondent



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PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment passed in MACT.O.P.No.542 of 2017 dated 03.02.2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode.

For Appellant : Mrs.B.Sureka
For Respondents : Mr.T.S.Arthanareeswaran for
M/s C.Paraneedharan

COMMON JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

CMA No.1381 of 2020 is filed by the claimant being dissatisfied with the award of the Tribunal passed in MCOP No.542 of 2017 dated 03.02.2020. CMA No.3481 of 2021 has been preferred by the Insurance Company assailing the award passed in the same MCOP.

2.The claimant sustained injury in the accident, which had taken place on 06.11.2015 at about 08.00 p.m at Uthukkattuppalaym in Erode District. It is the case of the claimant that he was 37 years at the time of accident and he was earning Rs.25,000/- per month by working motorcycle mechanic.

3.The Tribunal, after analyzing the evidence adduced by the parties, had come to the conclusion that the accident had occurred due to the negligence of the driver of the car bearing Reg.No.TN-30-AX-7777. While assessing the award, the Tribunal found that the claimant has not produced any documentary evidence to establish that he was earning Rs.25,000/- per month, hence, fixed the monthly notional income as Rs.10,000/-. Since Ex.C.1-Disability Certificate issued by the Medical Board approving that the claimant had sustained 85% disability, by applying multiplier method, the Tribunal has assessed loss of earning capacity at Rs.22,95,000/-(10000+5000x12x85%x15). While fixing the notional income at Rs.10,000/-, 50% is added for his future prospectus.

4.The learned counsel appearing for the Insurance Company submitted that the claimant is self-employed and as per the decision of the Constitution Bench in the case of National Insurance Company Ltd., vs. Pranay Sethi and others reported in 2017(2) TNMAC 609 (SC), he is entitled 40% of the notional income for future prospectus.

5.Per contra, the learned counsel appearing for the claimant submitted that considering the nature of employment of the claimant, the Tribunal ought to have applied 100% disability.



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6.It is an admitted fact that the claimant has no permanent employment and hence, he is entitled for 40% additional towards future prospectus. Hence, the award under the head of loss of earning capacity is reduced to Rs.21,42,000/- (10000+4000x12x85%x15) from Rs.22,95,000/-.

7.We have perused the materials placed before this Court and we are of the considered opinion that the award passed by the Tribunal on other heads are reasonable and it is not a fix case to apply cent percent disability.

8.In such view of the matter, CMA No.3481 of 2021 preferred by the Insurance Company is partly allowed and the appeal CMA No.1381 of 2020 preferred by the claimant is dismissed. The Insurance Company is directed to deposit the modified award amount of Rs.25,84,000/- with accrued interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount less the amount already withdrawn, if any, together with proportionate interest and costs. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Skn

To

1.The Motor Accident Claims Tribunal/
Special Subordinate Judge, Erode.

2.V.R.Section,
Madras High Court,
Chennai.

+2cc to Mr.T.S.Arthanareeswaran, Advocate SR.No.68438

+1cc to Mr.N.B.Suresh, Advocate SR.No.67798

C.M.A.Nos.1381 of 2020 and 3481 of 2021
and

C.M.P.No.20099 of 2021

KJ(CO)

GN(28/03/2022)