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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.03.2021

Judgment Pronounced on : 13.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.744 of 2014
and M.P.No.1 of 2014

M/s.New India Assurance Co.Ltd.,
Branch Manager,
D.No.17, 2nd Floor, Branch Office,
Port Main Road,
Sevvaipettai,
Salem - Town,
Salem Taluk & District.

.. Appellant/2nd Respondent

Vs.

1.Devendiran
S/o.Rajamanickam

..1st Respondent/Claimant

2.K.Sivakumar
S/o.Karuppannan

..2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.09.2012 made in M.C.O.P.No.5 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri District.

For Appellant : Mr.J.Chandran

For R1 : M/s.M.J.Abirami

JUDGMENT

(The case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 05.09.2012 made in M.C.O.P.No.5 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri District.



2.The appellant is the 2nd respondent in M.C.O.P.No.5 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri District. The first respondent filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.09.2010.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the second respondent and directed both 2nd respondent/owner of the lorry as well as the appellant-Insurance Company to jointly and severally pay a sum of Rs.8,37,360/- as compensation to the first respondent/claimant.

4.Challenging the award of the Tribunal dated 05.09.2012 made in M.C.O.P.No.5 of 2011, the appellant-Insurance Company has come out with the present appeal.

5.The learned counsel appearing for the appellant/Insurance Company is present in Court and submitted his arguments. As per his submissions, the claimant sustained fracture on the radius bone on his head. Whereas, the Tribunal had calculated the compensation based on the opinion of the Doctor, who examined as P.W.2 who had not treated the injured. He assessed the disability as 45%. The learned Tribunal had fixed the notional income as Rs.7,000/- and adopted the multiplier '18'. Therefore, the award passed by the Tribunal is excessive. Therefore, on the question of quantum, the Insurance Company had filed this appeal seeking to reduce the compensation granted by the Tribunal. The learned counsel for the appellant submits that instead of adopting the multiplier, percentage system could have been adopted. The Tribunal had granted award when evidence is available before the Tribunal that at the time of occurrence of the accident the claimant was a student of Diploma in Electronic and Communication Engineering. On the date, when the claimant was examined as P.W.1, he had successfully completed the Diploma course. When that be the case, the Tribunal ought to have arrived at the conclusion that as per the evidence available, the claimant had not suffered functional disability affecting his livelihood. Instead, the Tribunal had mechanically calculated the compensation with notional income of Rs.7,000/- when there is evidence that the claimant at the time of accident was a student and non-earning person. Also, the Tribunal mechanically accepted the evidence of P.W.2/Doctor, who had not treated the claimant and had assessed the disability as 45% when the injuries were on the face and legs. If the injuries were on the face had caused disability then the claimant will not to be having proper memory and could not have completed the Diploma course. Therefore the award passed by the Tribunal is liable to



be set aside.

6. The learned counsel for the 1st respondent was not present in Court or through virtual mode. Therefore, this Court posted this case on 12.03.2021 for submission of the learned counsel for the claimant, failing which this matter will be posted for orders. Since the 1st respondent had not submitted written arguments even though sufficient time was granted and it was mentioned that failing to file written submissions, the matter will be reserved for orders. From 12.03.2021, till 26.03.2021 no written submission was furnished either through E-mail or chat box. Therefore, posted for orders. Accordingly records perused and orders passed.

Point for Consideration:

Whether the award passed by the Tribunal is to be set aside?

7. Perused the records in M.C.O.P.No.5 of 2011 and award passed by the Tribunal. On perusal of the award, it is found that the contention raised by the appellant herein is justified. Particularly, the date of accident was 15.09.2010. On the date when he was examined as a witness as P.W.1, he had completed the course and had furnished the provisional certificate under Ex.P-10. Therefore, it is to be presumed that the treatment undergone by him for the injuries suffered by him, he had regained normal health. Only for the purpose of claiming compensation, the claim of 45% disability had been put forth. As per the reported rulings of the Hon'ble Supreme Court, the multiplier system can be applied in cases where the injured had suffered partial permanent disability affecting his/her source of income, livelihood. Here, it is not the case. Therefore for the purpose of claiming compensation 45% disability is claimed. The percentage of disability varies based on the opinion of the Doctors. It varies from Doctor to Doctor. Therefore, the Tribunal has the discretionary power to reduce the disability. For 45% disability, this Court can reduce it to 40%. For 40% disability, Rs.2,000/- per percentage can be applied as there is no functional disability affecting the livelihood of the claimant. Thus, the compensation awarded by the Tribunal towards permanent disability is reduced from Rs.6,80,400/- to Rs.80,000/-. The amount awarded by the Tribunal towards permanent disability is modified as follows:

$$\text{Rs.2,000/-} \times 40\% = \text{Rs.80,000/-}$$

The other heads regarding the compensation under Non-pecuniary heads, the award passed by the Tribunal is maintained as such. Thus, the compensation awarded by the Tribunal is modified as follows:



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	6,80,400/-	80,000/-	Reduced
2.	Medical expenses as per bills Ex.P-7	1,36,960/-	1,36,960/-	Confirmed
3.	Pain & sufferings	10,000/-	10,000/-	Confirmed
4.	Nutrition	5,000/-	5,000/-	Confirmed
5.	Transport expenses	5,000/-	5,000/-	Confirmed
	Total	Rs.8,37,360/-	Rs.2,36,960/-	Reduced by Rs.6,00,400/-

8. Accordingly, point for consideration is answered in favor of the appellant/Insurance Company. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,37,360/- is hereby reduced to Rs.2,36,960/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company as well as the 2nd respondent are directed to deposit the modified award amount now determined by this Court jointly and severally to the credit of M.C.O.P.No.5 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri District, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433. If the appellant/Insurance Company had deposited the award amount, the balance of the award that is now decided in this Appeal shall be withdrawn by the Appellant/Insurance Company from the deposited amount before the learned Motor Accidents Claims Tribunal. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gbi



To

The Additional District Judge,
Motor Accident Claims Tribunal,
Dharmapuri District.

Copy To

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

+1cc to Mr.J. Chandran, Advocate SR.No.40327

C.M.A.No.744 of 2014

BS (CO)
GMY (16/11/2021)