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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM:

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

C.M.A.No.2810 of 2019
and
C.M.P.No.14527 of 2020

M/s New India Assurance Company Limited,
Having its Branch Office at
No.17-B, Gandhi Road,
LIC of India North Branch,
Hasthampatti,
Salem.

...Appellant/3rd Respondent

Vs.

1.A.Prathap
2.K.Dakshynamoorthy
3.S.Killivalavan
4.P.Jothiammal
5.M/s The Reliance General Insurance Co. Ltd.,
Having Branch Office at
Sakthi Supermarket 3rd Floor,
No.408, Perundurai Road,
Erode Taluk and District.

..1st Respondent/Petitioner

...Respondents 2 to 5/
Respondents 1,2,4 & 5

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment dated 06.02.2019 passed in MCOP No.692 of 2017 by the Motor Accidents Claims Tribunal, (In the Court of Special Subordinate Judge), at Erode.

For Appellant : Mr.J.Michael Visuvasam
For Respondents : Mr.R.Nalliyappan (for R1)
Mr.S.Arunkumar (for R5)
Not Ready in Notice 2 to 4



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Heads	Rs.
Damages for clothes and Articles	500/-
Medical Expenses	5,100/-
Pain and Suffering	40,000/-
Disability and loss of earning power	6,04,800/-
Total	6,65,400/-
Less 10% for violation of M.V.Rules	66,540/-
Award amount	5,98,860/-
Rounded off	5,98,900/-

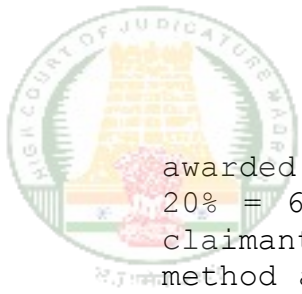
6.Assailing the award, the appellant Insurance Company has filed this appeal. This appeal has been filed only challenging the quantum, hence, the other issues need not be dealt with herein.

7.The learned counsel for the appellant Insurance Company has further contended that the Tribunal failed to consider Disability Certificate (Ex.P.41) which stated that the claimant has pain over the fracture site, in which disablement is assessed at 20%. When there is no evidence to show that he has suffered functional disability, the multiplier method adopted by the Tribunal to ascertain the loss of income cannot be sustained. It is his submission that the compensation can be awarded based on the disability certificate, but the appellant is opposing to apply the multiplier method to fix the loss of income. Hence, he seeks reduction of the award amount.

8.Per contra, the learned counsel appearing for the respondent/claimant would submit that the impugned Judgment and Decree awarding the aforesaid compensation is well reasoned and it requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

9.This Court carefully considered the submissions of the learned counsel for the appellant Insurance Company and the learned counsel appearing for the respondent/claimant and perused the materials available on record.

10.A perusal of records would show that the claimant suffered 20% disability and the Tribunal fixed the notional monthly income as Rs.10,000/- and by adding 40% towards future prospects and by applying multiplier '18', the Tribunal has



awarded Rs.6,04,800/- (10,000 + 4000 (40%) = 14000 x 12 x 18 x 20% = 6,04,800). Since there is no evidence to show that the claimant has suffered functional disability, the multiplier method adopted by the Tribunal is set aside. The amount awarded under the head of loss of income is set aside. This Court awards Rs.60,000/- towards Disability and Loss of earning Power by applying Rs.3,000/- per percentage. Further, considering the nature of injuries sustained by the claimant, the amount awarded under the head of pain and suffering is reduced to Rs.25,000/-. Further, the rate of interest fixed by the Tribunal as 7.5% is unaltered. Accordingly, the compensation awarded by the Tribunal to the claimant is re-quantified as follows:-

Heads	Rs.
Transport Expenses	2,000/-
Extra nourishment	3,000/-
Damages for clothes and Articles	500/-
Medical Expenses	5,100/-
Pain and Suffering	25,000/-
Disability and loss of earning power	60,000/-
Total	95,600/-
Less 10% for violation of M.V.Rules	9,560/-
Award amount	86,040/-
Rounded off	86,000/-

11.In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The appellant Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight 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

//True Copy//

Sub Assistant Registrar



skn
To

1. The Motor Accidents Claims Tribunal,
The Special Sub-Court, Erode.

+1 CC to Mr. J. Michael Visuvasam, Advocate sr 46266
+1 CC to Mr. S. Arunkumar, Advocate sr 46214.

C.M.A.No.2810 of 2019
and
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NRJK (CO)
SP (21/01/2022)