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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2065 of 2017
and
Cross Appeal 51 of 2020

CMA No.2065 of 2017

National Insurance Company Limited,
having its office at
73, Perundhurai Road,
Erode-11.

...Appellant/3rd Respondent

Vs

1.Basavanna
2.Madevaiya
3.M.Nakesh

...Respondent 1/Petitioner

(Respondents 2 and 3 were set exparte by the court
below. Hence dispensed with)

...Respondents 2 & 3/
Petitioner 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.06.2015 made in M.C.O.P.No.395 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam.

For Appellant : Mr.K.Padmanabhan

For Respondents : Mr.Ma.P.Thangavel for R1
R2 and R3-Exparte

Cross Appeal No.51 of 2020:

Basavanna

...Cross Objector

vs

1.National Insurance Company Limited,
having its office at
73, Perundhurai Road,
Erode-11.



2.Madevaiya

3.M.Nakesh

(Respondents 2 and 3 were set exparte by the court below. Hence dispensed with)

...Respondents

PRAYER: Cross Appeal filed under Order 41 Rule 22 of CPC, against the judgment and decree dated 22.06.2015 made in M.C.O.P.No.395 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sathyamangalam.

For Cross Objector : Mr.Ma.P.Thangavel

For Respondents : Mr.K.Padmanabhan for R1
R2 and R3-Exparte

C O M M O N J U D G M E N T

The appeal is filed by the Insurance Company being aggrieved by the award passed by the Tribunal in the claim petition filed by the accident victim.

2.The claimant has filed Cross Appeal No.51 of 2020 for enhancement of compensation.

3. On 29.03.2011, when the claimant and his friend were going in Hero Honda bearing Registration No.TN 36 V 8931, in which the claimant was on the pillion, near Sericulture Department quarters on the Talavadi to Talamalai road, a motor cycle bearing Registration No.TN 36 V 6726 coming from the opposite direction rash and negligently dashed against the motor cycle, in which the claimant was travelling as a pillion rider. In the said accident, the claimant sustained severe injury and was taken to the Government hospital, Sathyamangalam, later shifted to Coimbatore Medical College Hospital and treated as inpatient till 05.05.2007. In the said accident, the claimant has sustained fracture of left leg. His normal functioning got crippled. The claim petition was filed against the owner of the offending motor cycle and its insurer. The rider of his motor cycle was also arrayed as respondent. Claim of Rs.10,00,000/- was sought on the ground that the claimant was earning Rs.10,500/- per month as a Mason and due to the injury, he has lost his livelihood.

4.The Insurance Company filed counter resisting the claim on the ground that the accident occurred due to the motor cyclist in which the claimant was travelling as a pillion rider. The rider of the motor cycle had no valid driving license. It was his motor cycle, which hit the other vehicle insured under them.



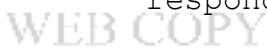
5. Prosecution was launched against the first respondent and final report was also filed against him by the police on investigation attributing the negligence on the part of the first respondent. Since the first respondent is the tortfeasor, the Insurance Company is not responsible to indemnify the claimant.

6. Before the Tribunal, the claimant and the Doctor, who gave the disability certificate were examined as P.W.1 and P.W.2. 13 exhibits were marked in support of the claim petition. The Insurance Company examined one witness and marked the Insurance Policy copy as Ex.R1.

7. The Tribunal after considering the evidence has awarded a sum of Rs.7,98,750/- with 7.5% interest payable from the date of petition till the date of realisation and liberty was given to the Insurance Company to recover the said amount from the respondents 1 and 2 who are the driver and the owner of the motor cycle.

8. The appeal is filed on the ground that the Insurance Company ought to have totally exonerated from the liability, since the rider of the motor cycle viz., the first respondent had no valid driving license. For the breach of policy condition, the Insurance Company should be exonerated from paying any compensation. Further, the learned counsel appearing for the appellant submitted that for the injury sustained by the claimant are not scheduled injury, however the Tribunal has erroneously applied the multiplier and has fixed the percentage of disability on higher side based on the disability certificate given by the Doctor, who was not the doctor treated the claimant. Further, the learned counsel stated that the multiplier for the persons aged (41-45) is '14' but the Tribunal has taken the multiplier '15', though the injured age was 41 years. Learned counsel also submitted that in the absence of proof for income, the Tribunal ought to have taken the notional income as Rs.6,500/- only but had taken Rs.7,500/- as monthly income to compute the loss of earning.

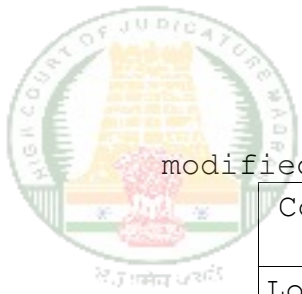
9. Learned counsel appearing for the respondent/claimant submitted that a Cross Appeal has been filed against the said award seeking enhanced compensation and the same has been numbered as Cross Appeal No.51 of 2020. According to the learned counsel for the claimant, the injury sustained by the claimant had totally crippled his normal life and he has lost his earning capacity in full. Ex.P5 will show that there is a shortening of the left leg and the claimant is unable to stand or sit for a long time. Further, the notional income of the claimant ought to have been fixed at Rs.10,000/- per month but



10. Heard the learned counsel for the appellant and the respondent. Perused the records and the grounds of the appeal.

12.As far as the quantum of compensation is concerned, in the absence of proof of income, the Tribunal has taken notional income of the claimant as Rs.7,500/- as against the claim of Rs.10,500/-. The Tribunal has assigned the reason for fixing the notional income as Rs.7,500/- after relying upon the judgment of this Court in Managing Director, TNSTC vs Samboornam. Being a skilled labour, this Court is not inclined to interfere the fixation of notional income by the Tribunal, since the reasoning given by the Tribunal appears to be just.

<https://hcservices.ecourts.gov.in/hcservices/>



modified as below:

Compensation under Various Heads	Award passed by this Court
Loss of income due to 40% functional disability (7,500X14X40/100X12)	Rs.5,04,000/-
Pain and Suffering	Rs. 40,000/-
Medical Bills	Rs. 5,241/-
Transport	Rs. 8,500/-
Attender Charges	Rs. 10,000/-
Loss of earning during the treatment period (7500X3)	Rs. 22,500/-
Total	Rs.5,90,241/-

14. The said amount with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation shall be paid by the Insurance Company within a period of twelve weeks from the date of receipt of a copy of this judgment. If any amount already deposited, the same may be taken into account and the balance to be paid by the Insurance Company. On such deposit, the claimant is permitted to withdraw the same on appropriate application.

15. Accordingly, the Civil Miscellaneous Appeal and Cross Appeal are disposed of. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Motor Accidents Claims Tribunal
Subordinate Judge, Sathyamangalam.

Copy to:

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



+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.10958

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RP (CO)
CB (03/09/2021)

CMA NO.2065 OF 2017
and
Cross Objection No.51 of 2020