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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2022

CORAM:

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

C.M.A.No.979 of 2020
and
C.M.P.Nos.6145 of 2020 and 16609 of 2021

M/s.National Insurance Company Ltd.,
'Regina Mansion'
No.46, Moore Street,
Parrys,
Chennai - 600 001.

... Appellant

Vs.

1.D.Manoharan
2.S.Anand Moopanar

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the Decree and Judgment dated 22.07.2019 passed in MCOP No.2740 of 2017 by the Motor Accident Claims Tribunal, (Special Sub-Judge - II, Court of Small Causes), at Chennai.

For Appellant :Mr.J.Michael Visuvasam

For Respondents:Mr.Balaji Prasad for R1
No appearance for R2

JUDGMENT

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

This appeal is filed by the Insurance Company questioning the award passed by the Motor Accident Claims Tribunal, (Special Sub-Judge - II, Court of Small Causes), Chennai, dated 22.07.2019 in M.C.O.P.No.2740 of 2017.



2.The first respondent herein filed the claim petition seeking compensation of Rs.1,50,00,000/- for the injuries suffered by him in a road accident which had taken place on 13.03.2017 at 22.45 hours. According to the claimant, on the faithful day, he was riding a motorcycle bearing Reg.No.TN-22-CA-8106 from north to south direction near Sivan Temple at Polichalur. At that time, a Car bearing Reg.No.TN-18-Q-6809 driven by its driver in a rash and negligent manner, rammed his two-wheeler. In the accident, he suffered injuries and he was taken to a hospital, where he took treatment for more than 100 days on five different occasions. It is also stated that he underwent one surgery during the treatment period.

3.The stand of the appellant before the Tribunal was that the offending car was driven by a person, who was in a drunken mood and hence, the liability cannot be fastened on the Insurance Company. That apart, they have also stated that the claim amount is on the higher side.

4.The parties had adduced oral and documentary evidence before the Tribunal. On appreciation of evidence adduced, the Tribunal came to the conclusion that the accident had taken place due to the negligence of the driver of the car and it was also found that he had consumed alcohol at that time. Hence, while awarding compensation, the Tribunal has directed the Insurance Company to pay the award amount and thereafter, recover the same from the owner of the vehicle, taking note of the fact that the claimant is the third party.

5.The learned counsel appearing for the appellant Mr.J.Michael Visuvasam mainly contended that the claimant has categorically admitted in his evidence that he continues with the same employment and there is no deduction of salary. Hence, applying multiplier method and awarding a sum of Rs.1,14,10,144/- cannot be sustained. In this regard, the learned counsel has also produced a decision in the case of Rajkumar vs. Ajaykumar reported in 2011 ACJ 1.

6.Per contra, the learned counsel appearing for the first respondent/claimant Mr.Balaji Prasad placing reliance on the decisions of the Hon'ble Apex Court in the case of Dinesh Singh vs. Bajaj Allianz General Insurance reported in 2014 ACJ 1412, Pappu Deo Yadav vs. Naresh Kumar and others reported in 2020(2) TN MAC 536 (SC), Sandeep Khanuja vs. Atul Dande & another



reported in 2017 (1) TN MAC 410 (SC) and I.Pavithra vs. R.Alan Joy reported in 2018 (2) TN MAC 660 (DB) argued that even though the injured claimant continues with the employment, he is entitled the amount under the head of loss of income.

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

8. We have gone through the decisions cited by the learned counsel appearing for the first respondent/claimant. In those cases, the injured claimant either resigned the job or removed from the employment or there was reduction of salary on account of the accident, hence, in our considered view, the decisions are not helpful to the claimant.

9. In the evidence, P.W.1 has categorically admitted that he continues with the employment after the accident. Furthermore, no material was produced before the Tribunal to show any reduction of income after the accident. Hence, in our considered view, the award amount of Rs.1,14,10,144/- under the head of loss of earning capacity cannot be sustained. It is also brought to the notice of this Court that in the case of injury, Rs.5,000/- per percentage is awarded, wherever, it is found that multiplier method could not be applied. Ex.C.1 Disability Certificate reveals that the claimant suffered 90% disability. Hence, Rs.4,50,000/- is awarded under the head of Disability by applying Rs.5,000/- per percentage. Documents annexed in the booklet shows that the injuries sustained on the right leg are not healed and he is still taking treatment.

10. It is the submission of the learned counsel appearing for the claimant that although the injured continues with the employment, he is taking continuous treatment and he is spending more amount towards medical expenses. It is also stated that without the help of the attendant, normal work could not be carried out by the injured. In support of his submission, documents have been enclosed in the booklet.

11. The learned counsel appearing for the appellant/Insurance Company has not seriously disputed the statement made by the learned counsel appearing for the first respondent/claimant.



12. In the light of the above, we modify the award under the other heads as follows:-

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Heads	Amount awarded by the Tribunal	Re-quantified Amount by this Court	Status
Disability 5000 x 90	Nil	4,50,000/-	granted
Loss of Earning Power	1,14,10,144/-	Nil	set aside
Pain and Sufferings	50,000/-	5,00,000/-	enhanced
Transportation	10,000/-	3,00,000/-	enhanced
Extra nourishment	25,000/-	1,00,000/-	enhanced
Damage of Cloth & Articles	1,000/-	5,000/-	enhanced
Attendant Charges	10,000/-	5,00,000/-	enhanced
Medical Expenses	2,09,193/-	2,09,193/-	confirmed
Loss of Amenities	10,000/-	10,00,000/-	enhanced
Future Medical Expenses	Nil	3,00,000/-	granted
Total	1,17,25,337/-	33,64,193/-	reduced
Rounded off	1,17,25,400/-	33,64,000/-	83,61,400/- is reduced

13. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The order of pay and recovery and rate of the interest 7.5% per annum as ordered by the Tribunal are confirmed. It is represented that 50% of the award amount has already been deposited to the credit of the claim petition. Hence, the first respondent/claimant is permitted to withdraw the modified award amount less the amount already withdrawn, if any, together with proportionate interest and costs. The excess



amount, if any, shall be returned to the appellant/Insurance Company. The appellant/Insurance Company is at liberty to recover the award amount from the owner of the vehicle in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

skn
To

1.The Motor Accident Claims Tribunal,
(Special Sub-Judge - II, Court of Small Causes),
Chennai.

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

+3cc to Mr.G.Indhumathi, Advocate Sr.7624

+1cc to Mr.J.Michael Visuvasam, Advocate Sr.7567

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and
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