



C.M.A(MD)No.246 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.246 of 2018

and

Cros.Obj(MD)No.7 of 2023

C.M.A(MD)No.246 of 2018:

National Insurance Company Limited,
Through its Branch Manager,
Second Floor, Number 92,
Devarpuram Road,
Near Court Building,
Tuticorin.

... Appellant/2nd Respondent

Vs.

1.Prakash

... Respondent/Petitioner

2.Muniasamy

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No..1205 of 2014, dated 05.10.2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Tirunelveli.

For Appellant : Mr.J.S.Murali



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For R1 : No Appearance

For R2 : Mr.A.Sivasubramanian

Cros.Obj(MD)No.7 of 2023:

Prakash ... Cross Objector/1st Respondent

Vs.

1.National Insurance Company Limited,
Through its Branch Manager,
Second Floor, Number 92,
Devarpuram Road, Near Court Building,
Tuticorin. ... Respondent/Appellant

2. Muniasamy ... Respondent/2nd Respondent

PRAYER: Cross Objection is filed under Order 41, Rule 22 of Code of Civil Procedure, against the fair and decreetal order, dated 05.10.2017 passed in M.C.O.P.No.1205 of 2014 on the file of Motor Accidents Claims Tribunal, Special Sub Court, Tirunelveli.

For Appellant : Mr.A.Sivasubramanian

For R1 : Mr.J.S.Murali

For R2 : No Appearance

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Tirunelveli primarily on the ground of quantum.



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2. According to the injured claimant, he is running a grocery shop through which he was earning a sum of Rs.10,000/- per month. Due to the injury sustained by him, he could not carry on his business and he has sought for a sum of Rs.25,00,000/- towards compensation.

3. The tribunal after considering the oral and documentary evidence, arrived at a notional income of Rs.6,000/- and 50% was added towards future prospects and the tribunal arrived at a monthly income of Rs.9,000/-. Thereafter, in view of the fact that the injured has sustained 77% disability based upon the disability certificate issued by the medical board which is marked as Exhibit C.1, the tribunal passed an award of Rs.12,47,400/- towards loss of income. The tribunal further awarded a sum of Rs.94,645/- based on Exhibit P.3, a sum of Rs.3,05,000/- based on Exhibit P.6, a sum of Rs.1,20,300/- based on Exhibit P.7, a sum of Rs.1,18,426/- based on Exhibit P.8, a sum of Rs.12,790/- based on Exhibit P.9, a sum of Rs.35,071/- based on Exhibit P.10, a sum of Rs.39,200/- based on Exhibit P.11 and a sum of Rs.3,33,173/- based on Exhibit P.17 towards medical bills. The tribunal further awarded a sum of Rs.1,00,000/- towards pain and suffering, a sum of Rs.50,000/- towards extra nourishment, a sum of Rs.50,000/- towards transportation charges, a sum of Rs.37,000/- towards attender charges, a sum of Rs.37,000/-



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towards loss of income during the period of treatment and a sum of Rs.1,00,000/- towards loss of amenities. Totally, a sum of Rs.26,80,005/- was awarded. This award is under challenge in the present appeal.

4. A perusal of the ground indicates that the appellant insurance company has admitted the liability up to the extent of Rs.18,00,000/- and has disputed the liability only to an extent of Rs.8,80,000/-.

5. According to the learned counsel appearing for the appellant, the injured claimant was aged 36 years at the time of accident and therefore, as per the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi & Others)**, only 40% should have been added towards future prospects and not 50%. He further contended that excessive amounts have been awarded under the heads of pain and suffering, extra nourishment, attender charges and loss of amenities. Hence, he prayed for allowing the appeal by reducing the award under the said heads.

6. Per contra, the learned counsel appearing for the cross objector/claimant had contended that the tribunal has not properly appreciated Exhibits P.12, P.18 and P.19 which would clearly indicate



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that the claimant was running a grocery shop. Therefore, the notional income fixed by the tribunal is on the lesser account and it should be enhanced.

7. I have carefully considered the submissions made on either side.

8. As rightly contended by the learned counsel appearing for the appellant/insurance company, as per the judgment of the Hon'ble Supreme Court reported in **2017 (16) SCC 680 (National Insurance Company Limited Vs. Pranay Sethi & Others)**, future prospects for an injured claimant whose age is below 40 years, only 40% of the income could be added towards future prospects. Therefore, this Court is inclined to accept the said contention. As far as the contention of the learned counsel appearing for the appellant with regard to the other heads are concerned, considering the extent of disability, namely 77% as assessed by the medical board, this Court does not find any reason to interfere in the quantum with regard to the other heads.

9. As far as the cross objection filed by the claimant is concerned, though the claimants have produced records to establish that the injured claimant was running a grocery shop, Exhibits P.12, P.18 and P.19 would



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never reveal that he was earning a sum of Rs.10,000/-. Therefore, this Court does not find any infirmity in the order of the tribunal in fixing the notional monthly income at Rs.6,000/-. Therefore, there are no merits in the cross objection.

10. In view of the discussions made in the preceding paragraphs, the future prospects could be added only to the extent of 40%. If 40% is added to Rs.6,000/-, it would reach a sum of Rs.8,400/- per month. Hence, the loss of income would come to $(8400 \times 12 \times 15 \times 77\%)$ Rs.11,64,240/-. Therefore, this Court is inclined to reduce the award amount of Rs.12,47,400/- under the head of loss of income to a sum of Rs.11,64,240/-.

11. In view of the above said deliberations, the appeal is partly allowed and the award of the tribunal, namely Rs.26,80,005/- is hereby modified and reduced to a sum of Rs.25,96,845/- which will carry the interest at the rate of 7.5%. Cros.Obj(MD)No.7 of 2023 is dismissed. The claimant is directed to pay the deficit Court fee, if any for claiming the additional compensation. In view of reduction in the award amount, the appellant insurance company is entitled to get refund of the excess amount along with accrued interest.



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12. C.M.A(MD)No.246 of 2018 stands partly allowed and
Cros.Obj(MD)No.7 of 2023 stands dismissed. No costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal,
Special Subordinate Court,
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.246 of 2018

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