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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1294 of 2016

and C.M.P(MD)No.10971 of 2016

Iffco Tokyo General Insurance Company Limited,
through its Branch Manager,
No.195, I & II Floor, North Usman Road, T.Nagar,
Chennai-17

... Appellant

Vs.

1. C.Jegan

2. M.Sicily

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order, dated 23.02.2015 made in M.C.O.P.No.484 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Sub Judge) Tirunelveli.

For Appellant : M/s.S.Srinivasa Raghavan

For Respondents : Mr.T.Selvakumaran

JUDGEMENT

The Insurance Company has preferred this Appeal against the Fair and Decretal Order, dated 23.02.2015 made in M.C.O.P.No.484 of 2009 on the file of the Motor Accident Claims Tribunal (Additional Sub Judge) Tirunelveli.

2. It is a case of injury. The injured had travelled as passenger and not as Cleaner in the vehicle. But subsequently, the injured had taken plea he



had travelled as Cleaner as well. Even in the First Information Report it has not been stated that the injured was travelling as Cleaner. But it has been stated that the father was travelling as Driver. However, this Court is not inclined to accept such plea, since it is usual practice in our country that sons would help the father in their avocation. Therefore, the contention of the Insurance Company is rejected.

3. It is seen the victim sustained injury in hip and the disability is assessed as 55%. But it is not been categorically stated it as “functional disability”. Therefore, 55% disability cannot be treated as permanent disability, consequently the multiplier method adopted by the Tribunal is erroneous. However, this Court is of the considered opinion that rather than recalculating the loss of income, it would meet the ends of justice, if some amount is reduced from the total compensation granted by the Tribunal. Hence, this Court is reducing Rs.3,35,332/-from the total compensation of Rs.5,85,332/-awarded by the Tribunal [Rs.5,85,332 – Rs.3,35,332 = Rs.2,50,000].

4. Accordingly, his Civil Miscellaneous Appeal is partly allowed. The Appellant/Insurance Company is directed to deposit a sum of Rs.2,50,000/- with 7.5% interest along with costs, within a period of 8 weeks from the date of



receipt of a copy of this Judgment, less the amount if already deposited. On such deposit, the claimant is entitled to withdraw the same, as per Law. No Costs. Consequently, connected miscellaneous petition is closed.

19.06.2024

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

To

1. The Motor Accident Claims Tribunal/
Additional Sub Court, Tirunelveli.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Judgment made in
C.M.A(MD)No.1294 of 2016**

19.06.2024