



C.M.A.No.3656 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.3656 of 2011
and C.M.P.No.1 of 2011

Royal Sundaram Alliance Insurance
Co. Ltd., having office at Sundaram Towers,
No.45 & 46, Whites Road,
Chennai 600 014.

... Appellant

vs.

1.P.Balaji
2.B.Ravi
3.S.Renuka
4.Sri Lakshmi Enterprises, Office
at No.61, Rajaji Street, Sanjay
Nagar, Erode 11.

... Respondents

PRAYER: Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 5th day of May 2011, made in M.C.O.P.No.40 of 2010, on the file of Motor Accident Claims Tribunal (Court of Chief Judicial Magistrate), Erode.



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For Appellant : Mr.Elveera Ravindran

For Respondent 1 : Mr.P.P.Shanmuga Sundaram

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Decree and Judgment dated 5th day of May 2011, made in M.C.O.P.No.40 of 2010, on the file of Motor Accident Claims Tribunal. The Chief Judicial Magistrate, Erode as regards quantum.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act by the injured claiming compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that occurred on 13.10.2006.



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3. The learned Tribunal, after hearing both sides arguments and upon consideration of oral and documentary evidence has passed an award in M.C.O.P.No.40 of 2010 for a sum of Rs.8,63,000/- with interest at the rate of 8% per annum from the date of application till the date of deposit.

4. Since the claim petitions M.C.O.P.Nos.40, 51 of 2010 were filed based on the same accident, common evidence was recorded in M.C.O.P.No.40 of 2010 and common judgment was passed.

5. The learned counsel appearing for the appellant would strenuously argue that the tribunal has granted a sum of Rs.4,08,263/- towards medical expenses based on Ex.P14 copy of medical bills: He would further contend that Ex.P14 is the only copy of medical bills and relying upon the same, amount awarded is incorrect. It is his further argument that for the injuries suffered by the respondent, the Doctor assessed the disability at 42% which is on the higher side. And the tribunal has taken it as 50% and adopted



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multiplier method is totally unsustainable, for the reason that if at all the injured is incapacitated to do his work or occupation and for whole body the disability has to be assessed which is not done by the tribunal and therefore, the compensation awarded in respect of loss of earning capacity is totally unsustainable and sought for a change in the quantum.

6. Per contra, the learned counsel for the respondent / claimant would vehemently contend that with regard to Ex.P14, as the claimant had matrimonial dispute with his wife and she has taken the medical bills with her. Ex.P14 copy of the medical bills was marked through the Medical Officer of hospital where he was given treatment. Therefore, as he has marked the medical bill Ex.P14 through proper person with reasons, the Tribunal has granted Rs.4,08,263/- for medical expenses which need not be disturbed. It is his further argument that owing to the injuries sustained on account of the accident, the respondent / claimant underwent three surgeries on 15.06.2006, 17.10.2006 and 28.10.2006. He underwent head



surgery - craniotomy. And he underwent another surgery over hip where, plates and screws were fixed. He was working as a car driver at the relevant point of time and because of the injuries suffered by him he finds it from difficult to drive the car as he did before. Therefore, the tribunal has taken disability at 50% and the loss of earning capacity was arrived at Rs.4,08,000/- by fixing notional income of Rs.4000/- by adopting multiplier '17'. He would stress upon the fact that because of the injuries sustained, he is not in a position to work as he did before and adoption of multiplier of the assessment of disability done by the tribunal is only aimed at granting of just and fair compensation and prayed for dismissal of the appeal.

7. With regard to the medical expenses, relying upon Ex.P14 copy of the medical bills, an amount of Rs.4,15,991/- was granted by the tribunal. In this regard, Dr.Kesavamoorthy attached to Kovai Medical Centre Hospital where the respondent took treatment, has been examined as P.W.3. It is the evidence of P.W.3 that the



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respondent was given treatment as inpatient in the hospital and the medical bill Ex.P14 copy was marked through him. The counsel for the appellant would come down heavily that the original medical bill might have been used for claiming medical insurance. Though the apprehension appears to be reasonable, the reason for the production of copy was given besides marking the said document through a proper person, the tribunal has accepted the Ex.P14 cannot be found fault with.

8. With regard to the disability Dr.Kesavamoorthy has been examined as P.W.4. It is his testimony, in his own words "மனுதாரர் பாலாஜி கடந்த 13.10.2006 அன்று நடந்த சாலை விபத்தில் காயமுற்று வலது பக்க தலையில் மண்டைக்காயம் ஏற்பட்டும் முனையில் இரத்த கசிவு ஏற்பட்டும் வலது பக்க இருப்பு முட்டில் அசட்டா புலம் என்ற எலும்பு உடைந்தும், வலது முழங்கால் அருகே டிரியா எலும்பு உடைந்தும் காயப்பட்டுள்ளார்." He has also given details as to the surgeries undergone by the respondent / claimant. He has assessed the disability in respect of his head injury at 18% and for the right



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hip bone at 18% and for the tibia bone at 15% based on the formula, also based on the Central Government guidelines dated 13.06.2001 and assessed total disability at 42%.

9. That apart, as per Ex.P13 discharge summary issued by Kovai Medical Centre Hospital, the respondent / claimant sustained head injury with right frontal Hemorrhagic contusion, closed type and fracture of Acetabulum right. From the evidence of P.W.1 and from the evidence of P.W.4 Doctor it could be seen that on 15.10.2006 for the head injury, the respondent had undergone a surgery - craniotomy and hemal evacuation. Apart from the surgery, blood clot was removed from the head. Of course it is a major surgery. Subsequently within 3 days he had undergone another surgery for the fracture of Acetabulum right, for which plates and screws were fixed. Even at the time of discharge he was ambulant nonfat appearing on right leg with walker support. He has also undergone a surgery where nailing was done in right tibia on 17.10.2006.



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10. Therefore, one can clearly understand that having undergone three surgeries in a short span of time that too for head and hip, the impact would have been very severe that is for a longer period he might not be in a position even to attend his personal work freely without any difficulties. It is also common understanding that the person undergoes the head surgery then he will have headache etc. Driving a vehicle involves constant concentration.

11. The learned counsel appearing for the appellants would draw attention of this Court in respect of the Judgment of the Hon'ble Supreme Court in *T.J.Parameshwarappa -vs- The Branch Manager, New India Assurance Co. Ltd., and others reported in Civil Appeal Nos.8598, 8599 of 2022*, wherein the Judgment dated 16.09.2016 passed by the Motor Accident Claims Tribunal was challenged before the High Court of Karnataka and because of the reduction in the total compensation by the High Court he approached the Apex Court wherein it was held that the same permanent disability may result in different percentages of loss of



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earning capacity in different persons, depending upon the nature of occupation or job, age, education and other factors. The compensation of Rs.11,67,405/- was ordered.

12. It is useful to refer to the observations of Hon'ble Supreme Court in *Mohd. Sabeer @ Shabir Hussain -vs- Regional Manager, U.P State Road Transport Corporation*, wherein the appellant who was a scrap dealer, while travelling in a bus on account of the accident sustained grave injuries and the disability was assessed as 70% in relation to right lower limb. That is a case of amputation of right leg below knee and the functional disability was assessed at 35% and multiplier method was adopted and compensation was enhanced to Rs.38,70,120/-. Considering the fractures suffered by the respondent the functional disability was fixed at 40%. The respondent was a car driver, and his income was fixed as Rs.4000/- by the tribunal. Based on the aforesaid discussions, to compute the loss of earning capacity the following formula emerges.

Age of the injured = 25 years



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Monthly income fixed = Rs.4000/-
Multiplier adopted = 17 m.
Disability assessed = 40%
= Rs.4000 x 12 x 17 x 40%
= Rs.3,26,400/-

In all other aspects the award appears to be reasonable and needs no interference. The compensation is awarded as reworked and tabulated as follows:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	For Medical Expenses	Rs.4,25,000	Rs.4,25,000	Confirmed
2	For Loss of future income	Rs.4,08,000	Rs.3,26,400	Reduced
3	For Miscellaneous Expenses	Rs.20,000	Rs.20,000	Confirmed
4	For Pain and Sufferings	Rs.10,000	Rs.10,000	Confirmed
	Total	Rs.8,63,000/-	Rs.7,81,400/-	Reduced

13. In the result,



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(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

WEB COPY (ii) The compensation awarded by the Tribunal is reduced from **Rs.8,63,000/-** to **Rs.7,56,920/-**.

(iii) The Insurance Company is directed to deposit the reduced compensation amount i.e., **Rs.7,56,920/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum **from the date of numbering of the petition** till the date of deposit to the credit of M.C.O.P.No.40 of 2010 on the file of the Motor Accident Claims Tribunal, Chennai (Chief Judicial Magistrate, Erode), within a period of *eight weeks* from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Tribunal below shall

disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.



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(v) Consequently, C.M.P.No.1 of 2011 is closed.

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Index : Yes/No
Speaking / Non-speaking order
rna

To

1. The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate), Erode.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,



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R.KALAIMATHI,J.,

In the operative portion of the judgment it is mistakenly typed as Rs.7,56,920/- instead of Rs.7,81,400/-.

2. In fact the amount awarded by this Court is Rs.7,81,400/-. It is ordered to effect correction accordingly.

08.03.2024

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Note: Issue order copy on 12.03.2024



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R.KALAIMATHI, J.,

rna

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08.03.2024