



C.M.A.No.2484 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 14.12.2022	Pronounced on 27 .01.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2484 of 2014
and Cros.Obj.No.121 of 2014

C.M.A.No.2484 of 2014

The Oriental Insurance Co. Ltd
Divisional Office 10
No.79, Uttamar Gandhi Salai
Chennai – 600 034

.. Appellant

Versus

1.M.Gowrishankar
2.S.Prashanthi

.. Respondents

Cros.Obj.No.121 of 2014

M.Gowrishankar

.. Appellant

Versus

1.The Oriental Insurance Co. Ltd
Divisional Office 10
No.79, Uttamar Gandhi Salai
Chennai – 600 034

2.S.Prashanthi

.. Respondents



C.M.A.No.2484 of 2014

Appeal and Cross Objections filed against the Judgment and Decree dated 07.02.2014 made in MCOP.No.5631 of 2011 on the file of the Motor Accident Claims Tribunal (V Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.M.Krishnamoorthy for appellant
in CMA and 1st Respondent in Cross
Objection.

For Respondents : Mrs.P.T.Salim Fathima for R1
and Cross Objector in Cross Objection
R2 - No appearance

COMMON JUDGMENT

The appellant herein, the second respondent before the Tribunal has filed this Civil Miscellaneous Appeal against the Judgment and Decree dated 07.02.2014 made in M.C.O.P.No.5631 of 2011 on the file of the Motor Accident Claims Tribunal (V Judge, Court of Small Causes) at Chennai, on the ground of liability and quantum.

2. The first respondent herein namely Mr.M.Gowrishankar sustained injury in the road accident happened on 26.09.2019.

3. The manner of the accident, factum of the accident, rash and negligence on the part of the driver of the offending vehicle are not in dispute.



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4. In the counter affidavit filed before the Tribunal, the Appellant Insurance Company has taken a specific plea that at the time of the accident, the driver of the offending vehicle (insured with the Appellant Insurance Company) was not having a valid driving license and the quantum claimed is excessive.

5. Before the Tribunal, the injured namely the first respondent herein has examined himself as PW1 and the Doctor as PW2. Ex.P1 to P9 were marked. On behalf of the Insurance Company, the Sub-Inspector of Police was examined as RW1 and the staff of the Insurance Company was examined as RW2. Ex.R1 to R4 were marked.

6. On consideration of both oral and documentary evidences, the Tribunal has fixed the notional income as Rs.5,000/- per month. As per the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)***, the Tribunal fixed the loss of earning power as Rs.2,40,000/- (i.e., Rs. 5000 x 12 x 16 x 25/100 = 2,40,000). Furthermore, the Trial Court granted Loss



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of income for three months as 15000/-(Rs.5000 x 3), transportation expenses at Rs.5000/-, extra nourishment as Rs.5000/-, damages to clothes as Rs.1000/-, Medical expenses Rs.39,500/-, attender charges Rs. 5000/-, pain and suffering as Rs.75000/- and loss of amenities as Rs. 75000/- totalling to the tune of Rs.4,60,500/-. The Tribunal has awarded a sum of Rs.4,60,500/- with interest. Hence, this appeal by the Insurance Company.

7. Heard the learned counsel for the parties and perused the materials placed on record.

8. On perusing the nature of injury sustained by the first respondent claimant, I find that the Ex.P2-Discharge summary, issued by Government General Hospital, shows that the petitioner sustained fracture of shaft of humerus left and facial injuries and was treated as inpatient from 26.9.11 to 1.10.11 thereby “U” slab was applied for fracture of shaft of humerus and thereafter referred to Ortho OP for facial injuries. Ex.P4 Discharge Summary issued by Sai Speed Medical Centre Hospitals shows that he was treated as inpatient from 3.10.11 to 6.10.11 in that hospital wherein diagnosed fracture of



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shaft of humerus with radial nerve palsy and underwent surgery thereby ORIF with NECP was done. In this connection, PW2-Dr.Amarnath R.Sowlee had deposed as under:

“மனுதாரருக்கு இடது மேல் கை எலும்பு நொறுங்கியுள்ளது. இடது பக்க தாடை எலும்பும் விலகியுள்ளது. வலது பக்க தலையில் பலத்த காயம் ஏற்பட்டுள்ளது. உடைந்து எலும்பு துகள்கள், நொறுங்கிய சதை மற்றும் தோல்களை அப்புறப்படுத்தி மாவு கட்டு போட்டு சிகிச்சை அளித்துள்ளனர். முகம், துலை மற்றும் தாடை எலும்புகளில் ஏற்பட்ட காயங்களுக்கும் சிகிச்சை அளித்துள்ளனர். உடைந்த மேல் கைக்கு ஒரு தடித்த கம்பியை 8 ஆணிகளைக் கொண்டு பொருத்தியுள்ளனர். தற்சமயம் இடது கையை தோள்பட்டை அளவிற்கு மேல் தூக்க இயலாது. சுழற்சி சிறிதளவே உள்ளது. முன்புறமும், பின்புறமும் கையை கொண்டு செல்ல இயலாது. இடது முழங்கையை முழுமையாக மடக்க இயலாது. தோள்பட்டையை 0 முதல் 110 டிகிரி அளவிற்கே தூக்க இயலும். இடது கையில் பிடிக்கும் திறன் குறைந்துள்ளது.”

9. It appears from the records that the Tribunal has taken whole body disability and also assessed it as functional disability at the rate of 25%, which I find as excessive and accordingly, it is reduced to 15%. Further, the monthly income is also fixed at Rs.3000 and accordingly, the loss of earning power is reduced to **Rs.86,400/-** from Rs.2,40,000/- (i.e., $3000 \times 12 \times 16 \times 15/100 =$



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Rs.86,400/-). Except the above head viz., loss of earning power, all other heads remains in tact which would come to Rs.3,06,900/- after the above reduction.

10. It remains to be stated that the nature of work of the claim petitioner being field work, due to fracture of the left humerus and ORIF treatment done to the claim petitioner, he could not do his regular duty and profession, as before the accident and accordingly, the multiplier method adopted by the Tribunal, is sustained and hereby confirmed.

11. From the Ex.R4, Copy of the insurance policy and from the evidences of RW1-Sub-Inspector of Police, it appears that at the time of the accident, the driver of the offending vehicle did not possess a valid driving license to drive the vehicle and hence, it amounts to violation of the policy conditions, as rightly contended by the learned counsel for the Appellant-Insurance Company. Hence, Appellant-Insurance Company is exonerated from the liability. However, following the judicial pronouncement of the Hon'ble Supreme Court in National Insurance Company Limited Vs.Swaran Singh and others reported in 2004 (1) TNMAC 104 (SC), this Court is inclined to issue a direction to the



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appellant/Insurance Company to pay the award amount with appropriate costs and interest and recover the same from the owner of the vehicle.

12. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed to the extent indicated above. Accordingly, the compensation awarded is reduced from Rs.4,60,500/- to Rs.3,06,900/-. The rate of interest awarded by the Tribunal remains in tact. No Costs. Consequently, connected Cross Objection Petition stands dismissed.

(ii) the Appellant insurance company is directed to deposit the modified reduced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited and recover the same from the owner of the offending vehicle/second respondent.

(iii) On such deposit being made, the claimant is permitted to withdraw his share in the award amount with proportionate accrued interest and costs, as



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per the ratio of apportionment made by the Tribunal, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) If at all the Appellant Insurance Company had already deposited the awarded compensation amount, after satisfaction of the award, the Tribunal is directed to refund the surplus deposited money taking note of the reduced compensation amount herein, to the Appellant Insurance Company.

27.01.2023

Internet : Yes/No
Speaking Order/Non-Speaking Order
dhk

To

1.The Presiding Officer
Motor Accident Claims Tribunal
(V Judge, Court of Small Causes)
Chennai.

2. The Oriental Insurance Co. Ltd
Divisional Office 10
No.79, Uttamar Gandhi Salai
Chennai – 600 03



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RMT.TEEKAA RAMAN.J,

dhk

**Pre-delivery Judgment made in
C.M.A.No.2484 of 2014**

27.01.2023