

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.1460 of 2015

and

M.P.No.1 of 2015

M/s.Reliance General Insurance Co.Ltd.,
Rai's Tower, Plot No.2054,
II Floor, 2nd Avenue Road,
Anna Nagar, Chennai - 600 040. ... Appellant/ 2nd Respondent

vs.

1.Mariasusai ...1st Respondent/ Claimant

2.J.Stephen ...2nd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under 173 of the Motor Vehicles Act 1988 against the Judgment and decree dated 30.10.2014 passed in MCOP No.2520 of 2011 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For appellant : Mr.M.B.Gopalan

For 1st respondent : Mr.S.Ravikumar

JUDGMENT

This Appeal is directed against the judgment and decree dated 30.10.2014 passed in M.C.O.P.No.2520 of 2011 by the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai, awarding a compensation of Rs.6,85,800/- along with interest @ 7.5% per annum from the date of petition till the date of deposit and costs.

2. Assailing the impugned judgment and decree, the learned counsel appearing for the appellant Insurance Company would submit that the Tribunal has awarded a higher compensation under various heads and has failed to appreciate the fact that the claimant did not suffer any substantial injuries and he did not even undergo any treatment for second time. The Tribunal further failed to appreciate that the assessment of disability by the Doctor PW.2 was without any basis and based on the same, the Tribunal has awarded Rs.90,000/- under the head of disability at the rate of Rs.2,000/- per percentage of disability. It has

also wrongly fixed loss of earning capacity without proper application of mind. Even the compensation fixed under various heads such as pain and suffering, extra nourishment, attender charges and loss of income for four months are all based on after thought and without any basis. Therefore, the approach adopted by the Tribunal in fixing the higher compensation towards pain and suffering, extra nourishment, attender charges and loss of income, should be revisited, he pleaded.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials available on record.

4. This Court is not able to see any justification in the above contentions of the learned counsel appearing for the Insurance Company. On 18.6.2011 at 11.00 p.m., while the first respondent was travelling as a passenger in the second respondent Auto Rickshaw bearing Regn.No.TN-09-BB-8880, near Nerkundram Bus Stop of Nerkundram to Karanodai Road, the driver of the Auto drove the Auto in a rash and negligent manner, and as a result, the auto capsized, due to which, the petitioner sustained grievous injuries. In the said accident, the first respondent/injured had suffered Fracture Shaft of Left Femur with multiple rib fracture left, and took treatment for about 44 days as inpatient in two spells and ORIF and IL nailing has been done. At the time of the accident, the injured was a Brick Chamber Worker and according to him, he was earning a sum of Rs.1,000/- per day. As the injured had not produced any proof in support of his earning, the Tribunal has rejected the said claim and fixed the notional monthly income at Rs.6,000/-. With regard to compensation awarded for disability, this Court finds that the Tribunal, considering the Disability Certificate marked as Ex.P.7, which was issued by the Doctor PW.2, Dr.N.Saichandran, along with other evidence, fixed a sum of Rs.90,000/- (Rs.2,000 X 45) under the head of Disability for 45% at the rate of Rs.2,000/- per percentage.

5. Further, it is seen that the first respondent/claimant suffered Fracture Shaft of Left Femur with Multiple Rib Fracture Left. Therefore, the Tribunal by taking note of such grievous injuries of the first respondent arrived the loss of earning capacity at 40%. As the claimant was aged about 31 years at the time of the accident, by applying the multiplier 16, the Tribunal has arrived at the compensation of loss of earning capacity as Rs.4,60,800/- taking into consideration the monthly notional income of Rs.6,000X 12 X 16 X 40%. Accordingly, the Tribunal has awarded compensation under other heads as follows:-

1. Loss of income for 4 months: Rs.24,000
2. Transportation : Rs.15,000
3. Extra nourishment : Rs.15,000
4. Damage to clothes : Rs. 1,000
5. Medical Expenses : Rs.15,000
6. Attender charges : Rs.15,000
7. Pain and suffering : Rs.50,000

Given the facts and circumstances of the case that the first respondent took treatment between 19.6.2011 to 26.7.2011 i.e. for a period of 38 days as inpatient at the Rajiv Gandhi Government Hospital, Chennai, and thereafter, he had also undergone surgery on 21.7.2011, in my view, fixation of compensation under other heads as stated above are just and reasonable one and the same do not require modification.

6. Thus, for the reasons stated above, this Court is not inclined to interfere with the above said compensation awarded by the Tribunal. Hence, the Civil Miscellaneous Appeal fails and the same is dismissed. No costs. The connected Miscellaneous Petition stands closed.

7. Since it is submitted by the learned counsel appearing for the appellant that the appellant has deposited only a sum of Rs.25,000/- towards statutory deposit while preferring the appeal, the balance award amount including interest and costs shall be deposited to the credit of M.C.O.P.No.2520 of 2011 on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, it is open to the claimant/first respondent to withdraw the entire amount by filing a proper application before the Tribunal.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

asvm

To

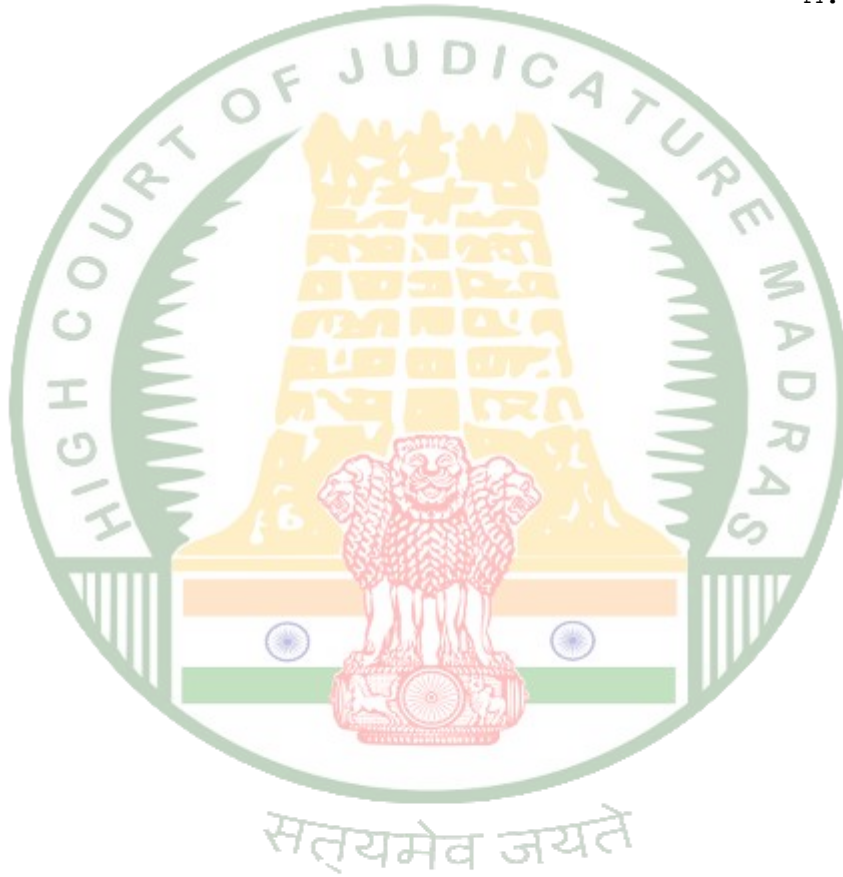
1. The Motor Accident Claims Tribunal/
II Court of Small Causes, Chennai.

2. The Record Keeper
VR Section,
High Court, Madras

1 cc to Mr.M.B. Gopalan, Advocate, sr. 64051
1 cc to Mr.S. Ravikumar, Advocate, Sr. 64480

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