

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

C.M.A.Nos.3026 of 2013 and 768 of 2014
and M.P.Nos.1 of 2014 and 1 of 2015

C.M.A.NO.3026 OF 2013:

Syed H.Sajjad HussainAppellant/Petitioner

vs.

1. R.Radhakrishnan,

2. The National Insurance Co.Ltd.,
No.751, Anna Salai,
Chennai - 600 002.

..... Respondents/Respondents

C.M.A.NO.768 OF 2014:

M/s.National Insurance Co.Ltd.,
751, Anna Salai,
Chennai - 600 006.

..... Appellant/2nd Respondent

vs.

1. Syed H.Sajjad Hussain,

2. R.Radhakrishnan

..... Respondents/Petitioner &
1st Respondent

Prayer: Civil Miscellaneous Appeals in C.M.A.Nos.3026 of 2013 and 768 of 2014 are filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 29.04.2013 made in MACT O.P.No.3714 of 2003 on the file of the II Judge, Motor Accidents Claims Tribunal (Court of Small Causes), Chennai.

For appellant : Mr.M.Saravanan
in C.M.A.No.3026
of 2013 and
For respondent : Mr.J.Chandran
No.2 in C.M.A.No.3026
of 2013 and for

appellant in C.M.A.
No.768 of 2014

For respondent No.1: Mr.T.Seshaia
in C.M.A.No.768 of
2014 R-1 Tr.CMP.3026/13 exparte (Now)
(Vide BSR.75575 dt. 26/8/2013)

COMMON JUDGMENT

(Judgment of the Court was made by V.RAMASUBRAMANIAN, J.)

These appeals are by the Insurance Company as well as the claimants, questioning the correctness of award dated 29.4.2013 passed by the Motor Accidents Claims Tribunal in MACT O.P.No.3714 of 2003,

2. Heard Mr.J.Chandran, learned counsel appearing for the Insurance Company and Mr.M.Saravanan, learned counsel appearing for the claimant.

3. In a road traffic accident that happened on 31.8.2003, the claimant suffered injuries. He filed MACT O.P.No.3714 of 2003 claiming compensation in a sum of Rs.20,00,000/-. By an award passed on 29.04.2013, the Tribunal awarded a compensation of Rs.13,78,500/-.

4. Aggrieved by the award, the Insurance Company has come up with C.M.A.No.768 of 2014. The claimant has come up with another appeal seeking enhancement of compensation in C.M.A.No.3026 of 2013.

5. There is no serious dispute about the liability. The dispute is primarily with reference to the quantum.

6. The Tribunal arrived at the amount of compensation in the following manner:

1. Loss of income for 3 months	:	Rs.	27,525
2. Transportation	:	Rs.	5,000
3. Extra nourishment	:	Rs.	5,000
4. Damage to Car	:	Rs.	81,135
5. Medical expenses	:	Rs.	96,700
6. Loss of Amenities of life and mental agony to the petitioner	:	Rs.	25,000
7. Pain and suffering	:	Rs.	15,000
8. Loss of earning power Rs.9,175x12x17x60%	:	Rs.	11,23,020

Total compensation is fixed at : Rs. 13,78,380

the same is rounded off to Rs.13,78,500/-.''

7. The main grievance of the Insurance Company is three-fold - (i) that the Tribunal ought not to have awarded an amount towards loss of income; (ii) that there is no provision for awarding an amount towards damage to the car and (iii) that the calculation of loss of earning power was completely erroneous.

8. Per contra, the grievance of the claimant is that as against their claim for continuing or permanent disability in a sum of Rs.4,00,000/-, the Tribunal did not award any amount and that the claim for compensation for the loss of earning power was not properly arrived at.

9. We have carefully considered the rival submissions made by the learned counsel appearing on either side.

10. The amount of Rs.27,525/- awarded by the Tribunal towards loss of income for three months, is not proper, especially when there is an award for loss of earning power. Therefore, we are of the considered view that the amount of Rs.27,525/- awarded towards loss of income for three months, may have to go. The claimant was in Hospital only for 13 days. The claimant was carrying his own business under the name and style of M.H.Shoes at Chennai. There was nothing on record to show that the business was closed during this period. Therefore, the award of Rs.27,525/- towards loss of income for three months is to be deleted.

11. Insofar as transportation and extra nourishment are concerned, the Tribunal has awarded only Rs.5,000/- under each head. But the nature of the injuries sustained by the claimant are such that the amount of Rs.5,000/- towards transportation and the amount of Rs.5,000/- towards extra nourishment, are completely inadequate. As per Ex.P.4, the claimant suffered fracture of Antero-inferior aspect of C2 vertebral body (tear drop fracture), Wedge compression fracture D4 vertebra, and undisplaced fracture base 1st metacarpal left hand and head injury. Therefore, the claimant ought to have been awarded atleast Rs.25,000/- towards transportation and Rs.25,000/- towards extra-nourishment.

12. As rightly contended by Mr.J.Chandran, learned counsel appearing for Insurance Company, there is no question of awarding any amount towards damage to the car. The car ought to have been insured and we do not know whether an independent claim has been made for the damage to the car. Therefore, the amount of Rs.81,135/- awarded towards damage to car has to be deleted.

13. The amounts of Rs.96,700/- towards medical expenses, Rs.25,000/- towards mental agony and Rs.15,000/- towards pain and suffering cannot be interfered with.

14. Insofar as the loss of earning power is concerned, the Tribunal has taken only a sum of Rs.9,175/- per month as the income of the deceased, as per Ex.P.12 copy of the Income-tax return for the assessment year 2002-2003, this cannot be interfered with. A multiplier of 17 has been allowed rightly taking into account the age and the partial permanent disability. However, the application of 60%, if at all, could be reduced to 55%. If so done, the amount to be awarded towards loss of earning power would come to Rs.10,29,435/- (Rs.9175 x 12 x 17 x 55%).

15. Therefore, we are of the view that the compensation awarded by the Tribunal should be worked out actually as follows:

(i) towards transportation	: Rs.	25,000.00
(ii) towards extra-nourishment	: Rs.	25,000.00
(iii) towards medical expenses	: Rs.	96,700.00
(iv) towards loss of amenities of life and mental agony	: Rs.	25,000.00
(v) Pain and suffering	: Rs.	15,000.00
(vi) Loss of earning power	: Rs.	10,29,435.00
Total	: Rs.	12,16,135.00

16. Therefore, the appeal of the claimant is dismissed. The appeal of the Insurance Company is partly allowed modifying the compensation payable into Rs.12,16,135/- and the amount will carry interest as awarded by the Tribunal. The Insurance Company is said to have deposited major portion of the award amount. Therefore, the balance amount shall be worked out and deposited by the Insurance Company within four weeks from today. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal
(II Judge, Court of Small Causes),
Chennai.

1 cc to Mr.J. Chandran, Advocate SR.32259
+1 cc to Mr.J.Chandran, Advocate, sr.32258 (27/10/2015)

Copy to: The Section Officer,
VR. Section, High Court, Madras.

C.M.A.Nos.3026 of 2013
and 768 of 2014

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