

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 03.12.2015****CORAM:****THE HONOURABLE MR.JUSTICE T.MATHIVANAN**

C.M.A (MD) No.1331 of 2015
and M.P(MD)No.1 of 2015

WEB COPY

The Branch Manager,
The Reliance General Insurance Company Limited,
80 Feet Road, Plot No.HIG 85,
First Floor, Sri Meenakshi Plaza,
Anna Nagar,
Madurai.

... Appellant/Respondent No.2

-Vs-

1.Ramu

... 1st Respondent/Petitioner

2.Pandi

... 2nd Respondent/Respondent No.1

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.10.2011 and made in M.C.O.P.No.99 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

For Appellant
For R - 1

: Ms.K.R.Shiva Shankari
: Mr.S.Pugalendhi

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Reliance General Insurance Company Limited under Section 173 of the Motor vehicles Act, 1988, as against the award, dated 28.10.2011 and made in the claim petition in M.C.O.P.No.99 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai.

2. The appellant/Insurance Company is the second respondent in the claim petition, whereas, the first respondent herein is the claimant and the second respondent herein is the first respondent therein (owner of the vehicle).

3. For easy reference, the first respondent herein may hereinafter be referred to as the claimant and the



appellant/Insurance Company be referred to as the second respondent and the second respondent herein be referred to as the first respondent wherever the context so require.

4. The claimant had moved the claims Tribunal with a claim petition in M.C.O.P.No.99 of 2010 claiming a sum of Rs.3,00,000/- for the injuries sustained by him in a road traffic accident said to have been taken place on 26.10.2009 at about 05.30 p.m., opposite to Kalaiyarkovil Mill gate.

5. It is alleged that on 26.10.2009 at about 05.30 p.m., when the claimant was proceeding in a two-wheeler bearing Registration No.TN-63-F-1346 opposite to Kalaiyarkovil Mill gate, a 407 van bearing Registration No.TN-63-A-2347 driven by its driver in a hectic speed towards west and dashed against the two-wheeler ridden by the claimant and as a result of which, the claimant was thrown out of his vehicle and sustained the following injuries:-

- a) Fracture over his right leg below knee.
- b) Multiple grievous injuries on all over his body.

Soon after the occurrence, he was taken to Sahayarani Hospital at Kalaiyarkovil and after First-Aid, he was referred to the City Hospital, Madurai. He had been taken treatment from 26.10.2009 to 28.10.2009 as an inpatient. The first respondent-owner of the vehicle remained ex-parte. The second respondent-Insurance Company alone had contested the claim petition.

6. The claimant was examined as P.W.1 and one Dr.Ganesan was examined as P.W.2. During the course of his cross-examination, Exs.P.1 to P.10 and M.Os.1 and 2 were marked. On the other hand, neither oral nor documentary evidence was let in on behalf of the second respondent-Insurance Company.

7. P.W.2 had examined the claimant clinically and found that he was suffered with the disability to the extent of 27%. To that effect, he had issued a disability certificate under Ex.P.10. Exs.P.8 & P.9-medical bills would go to show that he had totally incurred the medical expenses to the extent of Rs.53,644/- (Rounded off to Rs.53,640/-). At the time of accident, the petitioner was aged about 50 years.

8. It is revealed from the records that the claimant is an agricultural labourer and as such, he has stated that he was earning a sum of Rs.300/- per day and claimed that he was earning a sum of Rs.9,000/- per mensum. But in the absence of evidence, the Tribunal had not accepted the claim of the claimant, but found that he has earned daily a sum of Rs.100/- and on this basis, the monthly income was determined at Rs.3,000/- and his annual income was calculated to the extent of Rs.36,000/-. The

claimant had stated in his evidence that he had taken treatment for a prolonged period of one year and hence, he had totally claimed the loss of earning to the extent of Rs.1,00,000/-. However, based on the above calculation, the Tribunal had proceeded to award a sum of Rs.36,000/- towards the loss of earning for one year. Besides this, the Tribunal had also awarded a sum of Rs.1,00,000/- towards pain and sufferings; Rs.25,000/- towards extra nourishment; Rs.2,000/- towards transport expenses; Rs.2,000/- towards loss of estate and Rs.53,644/- towards medical bills. In total, the Tribunal had awarded a sum of Rs.2,18,644/- and rounded off to Rs.2,18,000/- directing the second respondent-Insurance Company to pay this amount with 9% interest within a period of one month. Challenging this award, the Insurance Company has filed this Civil Miscellaneous Appeal questioning the quantum alone.

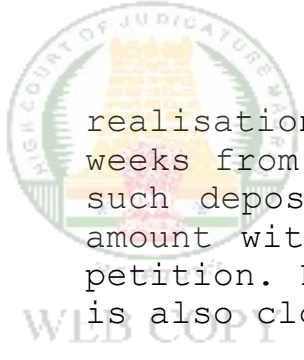
9. This Court has heard Ms.K.R.Shiva Shankari, learned counsel appearing for the second respondent-appellant/Insurance Company and Mr.S.Pugalendhi, learned counsel appearing for the claimant.

10. The accident has not been disputed. The nature of injury is also not disputed. Considering the total compensation awarded in favour of the claimant, this Court finds that it is disproportionate. The percentage of disability seems to have been assessed at 27%. In assessing the percentage of disability, there might be variation from Doctors to Doctors. Therefore, instead of fixing the disability at 27%, this Court finds that it may be better to fix the disability at 25%. Accordingly, the award of the Tribunal has been modified as under:-

Sl.No.	Heads of the award	Amount awarded
1.	Medical Bills	Rs. 53,640/-
2.	Disability	Rs. 50,000/-
3.	Pain & sufferings	Rs. 25,000/-
4.	Nutrition	Rs. 10,000/-
5.	Loss of earning capacity	Rs. 10,000/-
6.	Transport expenses	Rs. 2,000/-
	Total	Rs.1,50,000/-

Keeping in view of the above fact, the award of the Tribunal has been reduced to Rs.1,50,000/- from Rs.2,18,000/-.

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed. The Insurance Company is directed to deposit a sum of Rs.1,50,000/- with interest at the rate of 7.5% per annum together with cost from the date of claim petition till the date of



realisation, if not already deposited, within a period of four weeks from the date of receipt of a copy of this order. On making such deposit, the claimant is at liberty to withdraw the entire amount with accrued interest and costs without filing any formal petition. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

ps

To

The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate), Sivagangai.

+one cc to Mr.S.Srinivasa Raghavan, Advocate in SR.NO.69107
+one cc to Mr.S.Pugalendhi, Advocate in SR.No.69045

Copy to:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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