

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2825 of 2015
and M.P.No.1 of 2015
and C.M.P.No.3335 of 2016

Reliance General Insurance Company Limited
Rai's Tower II Floor,
Plot No.2054, II Avenue
Anna Nagar, Chennai 40. .Appellant/2nd Respondent

vs.

1. M.Srinivasan ..1st respondent/petitioner
2. D.Ranjith Kumar ..2nd respondent/1st
respondent

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 04.02.2015 made in M.C.O.P.No.4238 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.K.Varadha Kamaraj (R1)
R2-NA

JUDGMENT

(Judgment of the Court was delivered by K.SUDHAKAR,J.)

The Insurance Company is on appeal, challenging the award and decree dated 04.02.2015 made in M.C.O.P.No.4238 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

2. It is a case of injury. On 18.06.2012 at 3.00 p.m., when the claimant was travelling as pillion rider in the 2nd respondent's Motorcycle bearing Registration No.TN 22-CZ 8481 proceeding at Bengaluru National Highways Road, near Mambakkam

Village, Kanchipuram District, the 2nd respondent ridden the same in a rash and negligent manner and hit the backside of the unknown load van, as a result of which the Motor Cycle was capsized, thereby, the claimant sustained grievous injuries. Since the 2nd respondent was responsible for the accident and the appellant being the Insurance Company, the claimant, preferred a claim petition before the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, claiming compensation to the tune of Rs.30,00,000/-.

3. In support of the claim, the claimant was examined as P.W.1; Dr.K.J.R.R.Thiagarajan was examined as P.W.2; and Ex.P-1 to Ex.P.13 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Attested copy of FIR in Cr.No.554/2012, registered at C1 Sriperumbudur Police Station
P2	Discharge summary
P3	Discharge summary
P4	Discharge summary
P5	Outpatient treatment records
P6	C.T.Scan report
P7	Medical bills
P8	Medical prescriptions
P9	Estimation for future medical expenses
P10	Salary certificate
P11	Copy of driving licence of the petitioner
P12	X ray film
P13	Disability certificate

On behalf of the Insurance Company, no witnesses were examined however Ex.R1-copy of driving licence particulars of the petitioner was marked before the Tribunal.

4. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl. No.	Head	Amount granted by the Tribunal
1	Loss of income for 6 months	Rs.60,000/-
2	Transportation	Rs.20,000/-
3	Extra Nourishment	Rs.25,000/-

Sl. No.	Head	Amount granted by the Tribunal
4	Damage to clothes	Rs. 1,000/-
5	Medical expenses	Rs.9,02,000/-
6	Future medical expenses	Rs. 50,000/-
7	Attender charges	Rs. 25,000/-
8	Mental agony to the petitioner	Rs. 40,000/-
9	Loss of Amenities of life	Rs. 75,000/-
10	Pain and suffering	Rs. 50,000/-
11	Disability and loss of earning power Rs.10,000 x 12 x 17 x 45%	Rs.9,18,000/-
	Total	Rs.21,66,000/-

This Civil Miscellaneous Appeal is filed by the Insurance Company questioning the quantum of compensation awarded.

5. According to the learned counsel appearing for the appellant/Insurance Company, the Tribunal, has erred in awarding huge compensation of Rs.21,66,000/- on surmises and conjectures. Further, the Tribunal has erred in assuming 45% permanent disability contrary to the principles laid down by the Hon'ble Supreme Court in Ajaykumar's case reported in 2011 ACJ 1, with regard to the whole body concept and assessment of loss of earning capacity pertaining to the avocation carried on. A plea has been taken with regard to wrong award in respect of loss of earning capacity, when no proof has been produced either for earnings or for loss. He further pleaded that the award of compensation under the heads loss of income, extra nourishment, towards attender charges, towards future medical expenses, towards mental agony, loss of amenities, pain and sufferings are without any basis. Thus, according to the learned counsel the award of the Tribunal is unjustifiable.

6. On the other hand, the learned counsel for the 1st respondent/claimant submitted that the 1st respondent/claimant, Lorry driver, aged 26 years, met with an accident on 18.06.2012, thereby suffering fracture in right thigh and right hand and spleen was removed. He was treated as an inpatient at Parvathy Hospital, Chennai from 18.06.2012 to 18.07.2012. He had suffered Poly Trauma Abdomen injury, liver and splenic injury, chest injury, bilateral hemoperitoneum. It is the contention of the learned counsel for the respondent/claimant that though 100% disability was assessed by the Doctor, the Tribunal is erred in assessing the liability at 45%.

7. The learned counsel for the 1st respondent/claimant further contended that the award of the Tribunal under other heads also is not reasonable, since the Tribunal has not taken into account the 100% disability fixed by the Doctor and awarded the compensation.

Based on the above, the learned counsel for the respondent/claimant sought for dismissal of the above Civil Miscellaneous Appeal.

8. This Court considered the submissions made on the learned counsel on either side and perused the materials available on record.

8. On going through the compensation awarded by the Tribunal, we find that the loss of earning power granted by the Tribunal is on the higher side. When we analysed the deposition of P.W.2, it reveals that he did not give treatment to the injured. Further, after the accident, the injured has renewed his driving license on 28.05.2013. Hence, the disability to be assessed at the most could only be 30% and not 100%. As far as the multiplier adopted is concerned, the Tribunal has correctly adopted the multiplier 17 in the light of the decision reported in 2009 ACJ 1298 SC (Sarala Verma & Ors. vs. Delhi Transport Corporation and Anr.). Thus, by applying 30% disability, the amount to be granted under the head Loss of earning power would be Rs.6,12,000/- (Rs.10,000 x 12 x 17 x 30). Further, a sum of Rs.40,000/- has been given to mental agony to the claimant, which seems to be not just and proper in view of the fact that substantial amount has been given under various heads, however, for pain and sufferings, the Tribunal has awarded only a sum of Rs.50,000/-, which, in our opinion, is meagre. Hence, we are of the view that granting a sum of Rs.1,00,000/- under the heading "Pain and Sufferings" would meet the ends of justice. So also, for the loss of amenities, the Tribunal has granted only a sum of Rs.75,000/-, which, we feel that is on the lower side and hence, a sum of Rs.1,00,000/- is granted under the heading "loss of amenities".

10. Hence, by holding that the Tribunal has erred in awarding compensation under the heading mental agony to the claimant, while we delete the same, we confirm the compensation awarded under the other heads except modifying the amount under loss of earning power by fixing 30% disability and by enhancing the amounts under the head "loss of amenities" and for "Pain and sufferings".

11. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount now modified
1	Loss of income for 6 months	Rs. 60,000/-	Rs. 60,000/-
2	Transportation	Rs. 20,000/-	Rs. 20,000/-
3	Nourishment	Rs. 25,000/-	Rs. 25,000/-
4	Damage to clothes	Rs. 1,000/-	Rs. 1,000/-
5	Medical Expenses	Rs. 9,02,000/-	Rs. 9,02,000/-
6	Future Medical Expenses	Rs. 50,000/-	Rs. 50,000/-
7	Attender charges	Rs. 25,000/-	Rs. 25,000/-
8	Mental Agony to the petitioner	Rs. 40,000/-	Rs. -
9.	Loss of Amenities	Rs. 75,000/-	Rs.1,00,000/-
10	Loss of earning power	Rs.9,18,000/-	Rs.6,12,000/-
	Total compensation	Rs.21,66,000/-	Rs.18,95,000/-

12. There is no serious objection in respect of the interest granted at 7.5% per annum.

13. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award of the Tribunal is reduced to Rs.18,95,000/- from Rs.21,66,000/-.

(ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.

(iii) The appellant/Insurance Company is directed to deposit the entire award amount as ordered by this Court, if not already deposited to the credit of M.C.O.P.No.4238 of 2012 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai, within a period of eight weeks from the

date of receipt of a copy of this order.

(v) On such deposit, the claimant is permitted to withdraw the award amount on filing necessary application before the Tribunal.

(vi) There will be no order as to costs in this appeal.

Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Registrar,
II Court of Small Causes
(The Motor Accidents Claims Tribunal)
Chennai.

2. The Section Officer
VR Section,
High Court, Madras.

+1 cc to M/s.S.Arunkumar, Advocate, sr.15848

+1 cc to M/s.K.varadha Kamaraj, Advocate, sr.15369

C.M.A.No.2825 of 2015

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