

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 30.09.2016

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND

THE HON'BLE MR. JUSTICE N.ATHINATHAN

C.M.A.No.444 of 2016

and

C.M.P.Nos.3400 & 14504 of 2016

Shriram General Insurance Co. Ltd.
10003-E-8, RIICO Industrial Area
Sita Pura, Jaipur, Rajasthan - 302 002... Appellant/2ndRespondent

Vs.

1.Chandrasekar ...1st Respondent/Petitioner
2.Vidya ...2nd Respondents/1st
Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 8.4.2015 made in M.C.O.P.No.102 of 2013, on the file of Motor Accidents Claims Tribunal (Sub Court), Hosur.

For Appellant : Mr.S.Dhakshanamoorthy

For Respondents: Mr.P.A.Sudesh Kumar for R1

JUDGMENT

(delivered by S.MANIKUMAR, J.)

Quantum of Rs.43,65,600/- with interest, at the rate of 7.5% per annum, from the date of claim, till realisation, awarded to the first respondent/injured in MCOP No.102/2013 on the file of Motor Accident Claims Tribunal (Sub Court), Hosur, is challenged on the grounds inter alia that the Tribunal has awarded an excess compensation under various heads.

2. Record of proceedings shows that, while entertaining the challenge, this court, vide order dated 3.3.2016, granted interim stay of the said judgment and decree on condition that the appellant herein, should deposit the entire award amount, with proportionate interest and cost to the credit of MCOP No.102/2013 on the file of the Motor Accident Claims Tribunal (Sub Court), Hosur.

3. On this day, when the matter came up for hearing, both the learned counsel appearing for the parties, submitted that a sum of Rs.53,63,205/- (including interest and proportionate cost), has been deposited to the credit of the above said claim petition. Though the insurance company has challenged the quantum of compensation awarded under various heads, on this day, when the appeal is taken up for hearing, learned counsel for the appellant, restricted his submission to the compensation of Rs.3,06,000/- awarded under the head special diet. He also submitted that a sum of Rs.6,12,000/- awarded under the head, attendant charges is on the higher side. Except the above, no other submission has been made.

4. We have heard Mr.P.A.Sudeshkumar, learned counsel for the first respondent/injured, who argued to sustain the impugned award.

5. At the time of accident, the injured was aged about 26 years. To prove the nature of injuries sustained and the treatment underwent, the injured has marked Ex.P5 - Discharge summary, Ex.P6 - Ultrasound/Doppler Test Report and Ex.P7-MRI Surgical Spine Report. Apart from examining himself as PW1, to speak about the nature of injuries sustained and the consequential disability, PW2 - doctor, who clinically examined the respondent/injured, has also deposed that the respondent/injured has suffered grievous injuries and there was a surgery at C3 and C5. PW2-doctor has assessed the disability at 90% and also deposed that the injured/respondent requires a permanent attendant to accompany him.

6. Evaluating the documentary and oral evidence, the Tribunal has awarded a sum Rs.43,35,600/- with interest, at the rate of 7.5% per annum from the date of claim, till realisation and apportioned as hereunder:

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Loss of earning due to partial and permanent disability	Rs.13,26,000/-
Future prospects	Rs. 6,63,000/-
Pain and Suffering	Rs. 3,00,000/-
Medical Expenses (Ex.P9 series)	Rs. 5,78,600/-
Future medical expenses	Rs. 3,00,000/-
Extra nourishment	Rs. 3,06,000/-
Transportation	Rs. 50,000/-
Attendant charges	Rs. 6,12,000/-
Loss of other amenities	Rs. 2,00,000/-

Total	Rs.43,35,600/-

7. Going through the award, it could be seen that the Tribunal has decided to award a sum of Rs.2,00,000/- for future medical expenses, while tabulating the compensation under various heads, the Tribunal has awarded Rs.3,00,000/- for future medical expenses. Therefore, the said portion requires to be corrected. Compensation of future medical expenses is reduced to Rs.2,00,000/-.

8. First respondent/injured was in the hospital for about three months. Compensation of Rs.3,06,000/- awarded under the head special diet is slightly excessive. Therefore, we are inclined to reduce the same to Rs.2,00,000/-. No doubt, the injured/first respondent requires an attendant to be accompanied. At the time of accident, the injured was aged about 27 years. As per Ex.P5-Discharge summary, injured was admitted in Hosmat - Hospital Pvt. Ltd., Bangalore, on 24.7.2012. He was discharged on 10.10.2012. Claimant was said to have owned a cell phone shop. Before the Tribunal, no document has been filed to prove income. However, the Tribunal, fixed the monthly income as Rs.6,500/- for the purpose of computing loss of future earning.

9. Reading of the judgment shows that the injured/first respondent has taken treatment in four hospitals, the Tribunal ought to have awarded compensation under the head loss of earning during the period of treatment also. Considering the fact that the injured was hospitalised for nearly three months in Hosmat - Hospital Pvt. Ltd., Bangalore, we deem it fit to

award a sum of Rs.20,000/- under the head, loss of earning during the period of treatment.

10. Compensation of Rs.6,12,000/- awarded under the head attendant charges appears to be slightly on the higher side. No doubt, the injured requires an attendant, but having regard to the fact that he would be staying with his family, award under the said head requires reduction. Thus we reduce the same to Rs.4,00,000/- Compensation of Rs.2,00,000/- awarded under the head loss of amenities is reasonable. Tribunal has awarded 7.5% interest on future prospects. As per the decision of the Hon'ble Apex Court in Nagappa v. Gurudayal Singh reported in (2003)2 SCC 274, interest on future medical expenses ought not to have been awarded.

11. In Kothandapani vs. Tamilnadu Transport Corporation, reported in 2011 (5) SCC 420, the Hon'ble Apex Court held that an injured is entitled to claim compensation under both heads, disability and loss of earning capacity. In the case on hand, the Tribunal has not awarded any amount under the head permanent disability. There is no dispute over the extent of permanent disability assessed at 90%. A sum of Rs.2,000/- per percentage would be reasonable and thus under the said head, a total compensation of Rs.1,80,000/- is awarded.

12. Thus, after re-working, the compensation due and payable to the injured/first respondent works out to Rs.41,17,600/-, with interest, at the rate of 7.5% per annum from the date of claim till deposit and the same is apportioned here under.

Loss of future earning due to permanent disability	Rs. 13,26,000/-
Future prospects	Rs. 6,63,000/-
For permanent disability	Rs. 1,80,000/-
Pain and Suffering	Rs. 3,00,000/-
Medical Expenses (Ex.P9 series)	Rs. 5,78,600/-

Future medical expenses	Rs. 2,00,000/-
Extra nourishment	Rs. 2,00,000/-
Tranportation	Rs. 50,000/-
Attendant charges	Rs. 4,00,000/-
Loss of other amenities	Rs. 2,00,000/-
Loss of earning during treatment period	Rs. 20,000/-
Total	Rs.41,17,600/-

Thus there would be a reduction in the quantum of compensation by Rs.2,48,000/-.

In the result, the appeal is allowed in part. The judgment and decree of the Motor Accident Claims Tribunal (Sub Court), Hosur dated 8.4.2015 made in M.C.O.P.No.102 of 2013, is modified to the extent indicated above. The appellant-Insurance Company, has already deposited entire award amount with proportionate accrued interest and costs, to the credit of the above claim petition. The Tribunal is directed to disburse the compensation amount, only after due verification and identity of the claimant/1st respondent. Since the appeal itself is disposed of by this judgment, C.M.P.No.14504/2016, filed for withdrawal of 50% of the amount, is dismissed, as unnecessary. However, there shall be no order as to cost. Consequently, the connected C.M.P.No.3400 of 2016 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Motor Accident Claims Tribunal,
(Sub Court), Hosur

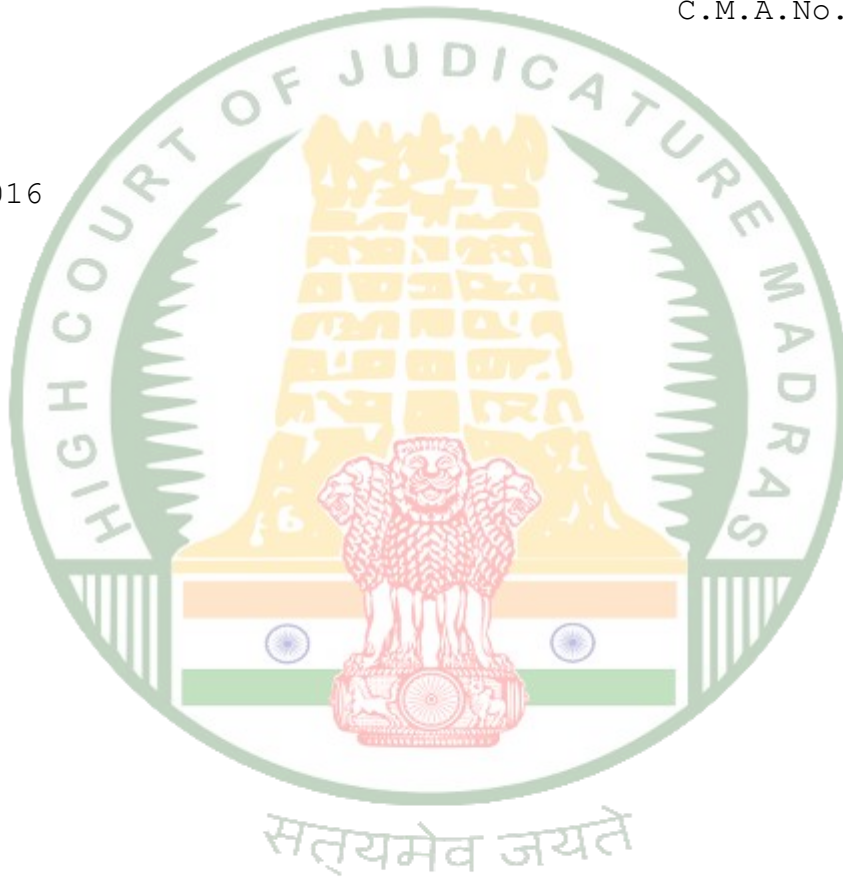
+1 cc to M/s.S.Dhakshnamoorthy Advocate sr56076

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