

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.2725 and 1222 of 2009
and MP No.1 of 2009

The United India Insurance Co., Ltd.,
Cuddalore. ..Appellant in C.M.A.No.2725
of 2009/2nd respondent

Divisional Manager,
The United India Insurance Co., Ltd.,
Cuddalore. ..Appellant in C.M.A.No.1222
of 2009/2nd respondent

Vs.

1. Ramu ... 1st respondent in C.M.A.No.2725
of 2009/Petitioner

1. Arumugham ... 1st respondent in C.M.A.No.1222
of 2009/Petitioner

2. Poonguzhali ... 2nd Respondent in both C.M.As./
1st Respondent

(set exparte before the
claims tribunal)

Prayer in C.M.A.No.2725 of 2009: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988,
against the decree and judgment dated 18.01.2006 made in
M.A.C.T.O.P.No.1722 of 2004 passed by the Principal
Subordinate Judge, Cuddalore (Before District Court
O.P.No.1644 of 2004) on the file of the Motor Accidents Claims
Tribunal, Cuddalore.

Prayer in C.M.A.No.1222 of 2009: Civil Miscellaneous Appeal
filed under Section 173 of the Motor Vehicles Act, 1988,
against the decree and judgment dated 24.08.2006 made in
M.A.C.T.O.P.No.1658 of 2004 passed by the Principal
Subordinate Judge, Cuddalore (Before District Court
O.P.No.1568 of 2004) on the file of the Motor Accidents Claims
Tribunal, Cuddalore.

For Appellant : Mr.K.Padmanabhab
in both C.M.As. for Mr.M.J.Vijayaraghavan

For R1 : No Appearance
(in both CMAs)

For R2 : Exparte before the Trial Court
(in both C.M.As)

COMMON JUDGMENT

Both these appeals arise out of compensation awarded vide two separate orders in favour of two separate claimants arising out of same accident. The insurance company, challenges the quantum of compensation awarded by the Tribunal.

2. Both the claimants were passengers in a share auto at the time of accident. The accident had happened on 04.06.2004, when the share auto in which the claimants were travelling was hit by a lorry belonging to the second respondent, due to which both the claimants suffered fracture of tibia. Both the claimants have preferred separate claim for the injuries they suffered at Rs.5,00,000/- each. As against the said claim, the Tribunal had passed an award for Rs.2,22,600/- in the case of the complainant in C.M.A.No.2725 of 2009, and Rs.2,99,600 in the case of the complainant in C.M.A.No.1222 of 2009.

3. The first respondent in both the appeals are the claimants. The second respondent who is the owner of the vehicles remained absent before the Tribunal and was set ex parte. Notice was ordered to the first respondent/claimant in both the appeals. It appears that notice was served to the first respondent/claimant in CMA.No.1222 of 2009, whereas notice sent to the first respondent in CMA.No.2725 of 2009 was returned unserved with an endorsement "left" and thereafter, paper publication was effected, despite which, there was no appearance for the first respondents in both the appeals even today.

4. The only point argued by the learned counsel for the Insurance Company is that in both the cases, the Tribunal was wrong in adopting multiplier method in granting compensation when hardly any evidence was forthcoming from the claimants regarding any functional disability. To highlight how excess the compensation awarded on this head, the learned counsel took this Court through the award and submitted that in C.M.A.No.2725 of 2009 out of the compensation of Rs.2,22,600/- the component for loss of earning capacity is determined at Rs.2,01,600/-. Similarly, in C.M.A.No.1222 of 2009, out of the total award amount of Rs.2,99,600/- compensation awarded, on the head of loss of earning power alone constitutes to Rs.2,91,600/-. Curiously in the former case, percentage of disability was fixed at 35% whereas in the latter case it was fixed at 30%, yet in the second claim the higher compensation was granted. In neither cases, is there any functional disability to the injured and as such compensation amount has to be appropriately fixed.

5. In the situation where two claims arise out of same accident, proceedings were not consolidated, but enquired separately by the same Tribunal, and appear to have fallen into same error in assessing the nature of the injuries.

6. Admittedly, both the claimants in both the claim petitions were travelling in a share auto, when the auto in which they travelled met with an accident due to the negligence of the driver of the auto. There is no dispute regarding the negligence-factor in these appeals. As indicated by the counsel for the appellant, the methodology adopted by the Tribunal does not impress this Court, given the nature of injuries the respective claimants have suffered. Let them be taken in the following order :

CMA.No.2725 of 2009 :

In this case, the claimant has suffered fracture to his left leg, besides other injuries to his body. P.W.2, the doctor has determined that he had suffered 35% permanent disability. The claimant was stated to be working as a mechanic at that relevant time and was said to be earning Rs.7,500/- per month. However, the Tribunal fixed the income notionally at Rs.3,000/- and applied a multiplier of 16, and reduced the same to 35% ($\text{Rs.}3000 \times 12 \times 16 \times 35\%$) to arrive at Rs.2,01,600/-. After adding other non-pecuniary damages, it fixed the total compensation amount at Rs.2,22,600/-. No where it is stated by the petitioner how the fracture to the left leg had resulted in the claimant's avocation as a mechanic. In fitness of things, the claimant must be awarded Rs.3,500/- per percentage of disability and accordingly the total amount payable would be Rs.1,22,500/- on the head of disability. For loss of earning, he was awarded Rs.6,000/-, calculating the same for two months at Rs.3,000/- per month as his monthly income. As to the other, the amount awarded by the Tribunal is confirmed.

CMA.No.1222 of 2009 :

In this case, the claimant has suffered fracture of left tibia bone owing to the accident. P.W.2, the doctor has determined that he had suffered 30% permanent disability. The claimant was stated to be working as a contractor at that relevant time and was claimed to be earning Rs.8,000/- per month. However, the Tribunal fixed the income notionally at Rs.4,500/- and applying a multiplier of 18, and reducing the same to 30% ($\text{Rs.}4500/- \times 12 \times 18 \times 30\%$) it determined the compensation payable on this head to Rs.2,91,600/-. After adding other non-pecuniary damages, it fixed the total compensation amount as Rs.2,99,600/-. No where it is stated by the petitioner how the fracture to the left tibia had resulted in the claimant's avocation as a contractor. In fitness of things, the claimant must be awarded Rs.3,500/- per percentage of disability and accordingly the total amount payable would be Rs.1,05,000/- on the head of disability. For loss of earning, he was awarded Rs.7,000/-, calculating the same for two months at Rs.3,500/- per month as his monthly income. On the head

of pain and suffering, the amount was enhanced to Rs.10,000/- from Rs.8,000/- and for simple injuries another, a sum of Rs.10,000/- was awarded. As to the other, the amount awarded by the Tribunal is confirmed.

7. The amount now determined is just and fair compensation, and the same is tabulated below :
C.M.A.No.2725 of 2009:

Heads	Awarded Amount	Revised Award
Loss of earning capacity/disability	2,01,600	1,22,500
Pain and Suffering	10,000	10,000
Loss of earning (for 2 months)	-	6,000
Transport	1,000	1,000
Extra nourishment	10,000	10,000
Total	2,22,600	1,49,500

C.M.A.No.1222 of 2009:

Heads	Awarded Amount	Revised amount
Loss of earning capacity / disability	2,91,600	1,05,000
Pain and Suffering	8,000	10000
Towards simple injuries	-	10,000
Loss of earning for 2 months		7,000
Total	2,99,600	1,32,000

7. In the result, the appeals are partially allowed without costs and the appellant is directed to deposit the revised award amounts to the claimants along with accrued interest, less if any already deposited within a period of four weeks from the date of receipt of a copy of this order and the claimants are entitled to withdraw the same forthwith. If the entire amount is already deposited, appellant is permitted to withdraw the amount deposited in excess of what is now awarded. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To:

1. The Motor Accidents Claims Tribunal,
Principal Subordinate Judge, Cuddalore.

2. The Record Keeper,
V.R.Section, High Court, Madras.

+ 2 ccs to Mr.M.J. Vijaya Raghavan, Advocate Sr.74946, 74947

C.M.A.Nos.2725 and
1222 of 2009

SS(CO)
EU(28/10/2017)



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