

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.07.2017

CORAM

The Honourable Mr.Justice R.SUBBIAH
AND
The Honourable Mr.Justice A.D.JAGADISH CHANDIRA

C.M.A.No.1096 of 2015
and
M.P.Nos.1 & 2 of 2015

The Divisional Manager,
The New India Assurance Co. Ltd.,
No.40/51, Sekupet Nadu Street,
Kancheepuram. ..Appellant/Respondent

..vs..

1.B.Murali ..1st Respondent/Petitioner

2.D.Lakshmi Narayanan ..Respondent/Respondent-1
(R2-remand exparte before the tribunal)

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 27.01.2015, made in M.C.O.P.No.339 of 2011 on the file of the Motor Accidents Claims Tribunal (Sub-Court), Tiruttani.

For Appellant : Mr.S.Manohar
For Respondents : Mr.V.Vijayakumar (For R1)

JUDGMENT

R. SUBBIAH, J.,

Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Sub-Judge), Tiruttani, in M.C.O.P.No.339 of 2011 by judgment and decree dated 27.01.2015, the present appeal has been filed by the Insurance Company.

2.Since in the present appeal quantum of compensation awarded by the Tribunal alone is challenged, it is not necessary for this Court to deal with the other aspects of the award passed by the Tribunal.

3.The 1st respondent herein is the claimant and the 2nd respondent herein is the owner of the vehicle. The case of the claimant before the Tribunal is that on 05.03.2011 at about 13.30 hours, he was riding two wheeler bearing Reg.No.TN-20-J-7275 on the Chennai-Tirupathi Bypass Road; that he turned his two-wheeler to a petrol-bank for filling petrol; at that time, a car bearing Reg.No.TN-04-L-3394 came from opposite direction in a rash and negligent manner and dashed against the two-wheeler in which the claimant was riding, as a result of which, the claimant was thrown away and he sustained grievous injuries all over his body. Hence, the claimant made a claim for Rs.21 lakhs as compensation.

4.The case of the claimant was resisted by the Insurance Company stating that the accident occurred only due to the rash and negligence of the claimant and not by the driver of the car; thus, they sought for dismissal of the claim petition.

5.Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1, besides examining a doctor as P.W.2 and marked six documents as Ex.Ps.2 to 6. On the side of the Insurance Company, neither the oral evidence nor the documentary evidence was adduced. The Tribunal, after considering the entire evidence, has awarded a sum of Rs.21,02,855/- with interest @ 7.5% pa. The breakup details of the compensation amount awarded by the Tribunal are as follows:

1.Disability	- Rs.16,32,000/-
2.Transportation	- Rs. 20,000/-
3.Extra Nourishment	- Rs. 20,000/-
4.Pain and suffering	- Rs. 60,000/-
5.Medical Bills	- Rs. 3,70,855/-
	Rs.21,02,855/-

Now, questioning the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present appeal.

6.It is the submission of the learned counsel for the appellant/Insurance Company that the evidence on record would show that on account of the accident, the claimant had sustained two fracture injuries on the left leg and another fracture injury on the right leg. But, the Doctor/P.W.2 had assessed the percentage of disability for each fracture injury separately and independently and thus, issued a disability certificate for 100%. The disability assessed by the Doctor/P.W.2 for the two fractures sustained by the claimant on his left leg was at 30% & 40% respectively. For the fracture sustained on right leg, the Doctor-P.W.2 has assessed the disability at 40% separately. This method of calculation made by the Doctor-P.W.2 for

assessing the percentage of disability is apparently wrong. Since the assessment of disability was made independently and separately for each fractures sustained the claimant, it ultimately resulted in awarding excess compensation by the Tribunal. Therefore, the compensation awarded by the Tribunal needs to be properly modified.

7.The learned counsel for the 1st respondent/claimant submitted that the Tribunal, only after analysing the evidence on record in a proper perspective, has rightly awarded the compensation and it need not be modified.

8.Keeping in view the submissions made on either side, We have carefully gone the materials available on record and We find that as contended by the learned counsel for the appellant/Insurance Company, the Doctor/P.W.2 has assessed the percentage of disability separately for two fractures sustained by the claimant on the left at 30% & 40% respectively and another on the right leg at 30%. In our considered opinion, the assessment made by the Doctor/P.W.2 is not correct. Considering the nature of the fracture injuries sustained by the claimant viz., fracture of both right and left femur, the total disability shall be fixed at 60% by fixing 30% each. Further, the claimant is earning income by running private travel business. Hence, the sum of Rs.8,000/- fixed by the Tribunal as monthly income of the claimant cannot be said to be on the higher side. Considering the age of the claimant, who was 35 years at the time of accident, the correct multiplier would be 16. Hence, the compensation awarded by the Tribunal under the head of Disability is reduced from Rs.16,32,000/- to Rs.9,21,600/- (8,000 X 12 X 16 X 60/100).

9.Further, We are of the opinion that the compensation amount awarded by the Tribunal under the head of Medical Bills cannot be said to be on the higher side, as it was borne out by the medical bills. Similarly, the compensation awarded by the Tribunal under the heads of Transportation, Extra Nourishment and Pain & Sufferings also cannot be said to be excessive, accordingly, the same are confirmed.

10.However, We find that due the disability suffered by the claimant on account of the accident, he would find it difficult to carry on his day-to-day affairs, which he was doing before the accident. Hence, it would be appropriate to award a sum of Rs.1 lakh towards loss of amenities to the claimant. Accordingly, a sum of Rs.1 lakh is awarded towards loss of amenities to the claimant. Similarly, the Tribunal has not awarded any amount to the attended charges. Hence, a sum of Rs.8,000/- is hereby awarded as compensation towards attended charges. Thus, the compensation amount of Rs.21,02,855/-

awarded by the Tribunal is hereby modified and reduced to Rs.15,00,455/-, which is rounded off to Rs.15,00,000/-. The breakup details of the modified compensation amount are as follows_

- 1.Disability -Rs.9,21,600/-
- 2.Transportation -Rs. 20,000/-
- 3.Extra Nourishment -Rs. 20,000/-
- 4.Pain and Sufferings-Rs. 60,000/-
- 5.Medical Bills -Rs.3,70,855/-
- 6.Loss of amenities -Rs.1,00,000/-
- 7.Attended charges -Rs. 8,000/-

Total Rs.15,00,455/-(rounded off as Rs.15 lakhs)

11.In the result, the appeal is partly allowed and the compensation amount awarded by the Tribunal is modified and reduced to Rs.15,00,000/-. In other aspects, the award passed by the Tribunal is confirmed. The Insurance Company is directed to deposit the modified compensation amount, with interest at the rate of 7.5% pa from the date of petition till the date of deposit, after adjusting the amount if any already deposited, before the Tribunal, with in a period of six weeks from the date of receipt of a copy of order. On such deposit, the 1st respondent/claimant is permitted to withdraw the entire amount with proportionate interest, by making necessary application before the Tribunal. If any balance amount is in the deposit, the Insurance Company is permitted to withdraw the same.

Connected Miscellaneous Petitions are closed. No costs.

Sd/-

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Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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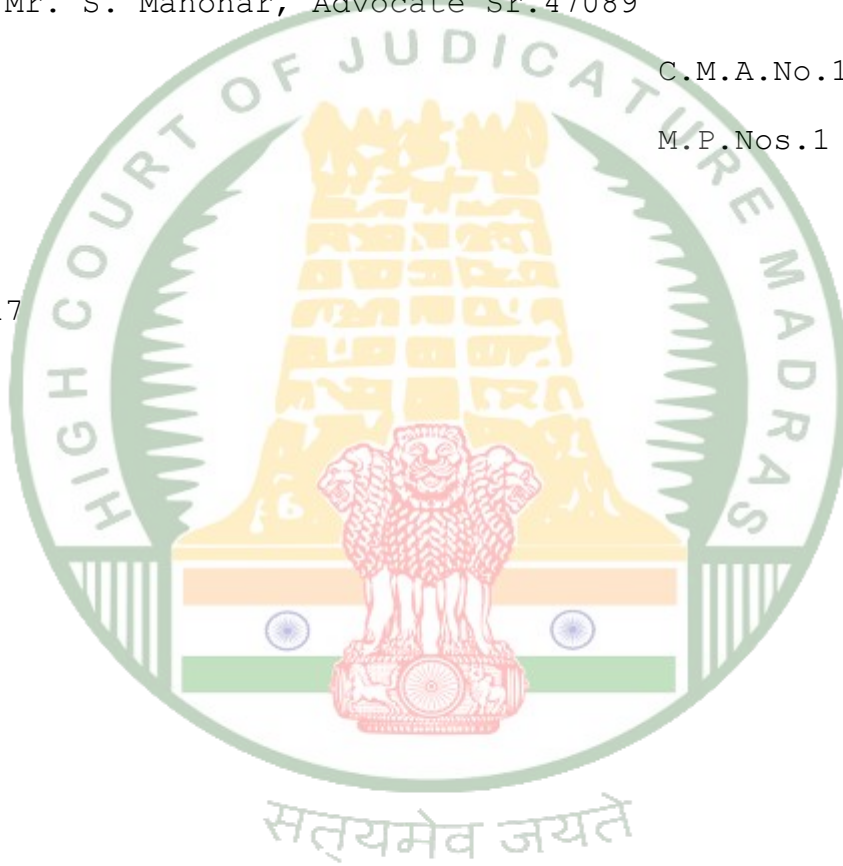
The Motor Accidents Claims Tribunal,
(Sub-Court), Tiruttani.

+ 1 cc to Mr.V.Vijayakumar, Advocate SR.47162

+ 1 cc to Mr. S. Manohar, Advocate Sr.47089

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