

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. Nos.2816 and 2817 of 2016
and
C.M.P. Nos. 20433 and 20434 of 2016
and
C.M.P. No.6110 and 6111 of 2017

Cholamandalam Ms General
Insurance Company Limited,
No.2, N.S.C. Bose Road,
Dare House, Chennai - 600 001. ... Appellant in both appeals

Versus

1. M.Santhosh R-1 in C.M.A. No.2816/ 2016
1. V.Balakrishnan R-1 in C.M.A. No.2817/2016
2. Vinayaga Moorthy R-2 in both appeals

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in MCOP Nos.2426 of 2013 and 2427 of 2013, dated 23.02.2016 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai respectively.

For Appellant : M/s.M.B.Gopalan Associates
in both Appeals

For Respondent : Mr. K.Suryanarayanan
in both Appeals
R2 Exparte before the Tribunal

COMMON JUDGMENT

CMA No.2816 of 2016

The claimant, M.Santhosh, in MCOP No.2426 of 2013, aged 21 years at the time of accident, employed as Technician at Friends Car Accessories, and earning a sum of Rs.15,000/- p.m. sustained severe Head injury and loss of vision and multiple injuries all over the body, filed claim petition claiming a sum of

Rs.20,00,000/- as compensation.

2. The Tribunal, on consideration of oral and documentary evidence, awarded compensation in a sum of Rs.11,53,600/-, the break up of which is as hereunder :-

Rs.

Loss of earning capacity 12,000 x 12 x 30% x 18/100	7,77,600
Transport and nourishment	50000
Medical expenses	71000
Disability	150000
Loss of earning during treatment period	24000
Attender charges	6000
Pain and sufferings	50000
Amenities	25000
Total	1153600

Challenging the compensation awarded as excessive, the appellant/insurance company has preferred the present appeal.

3. The main contention of the learned counsel for the appellant is that the Tribunal committed error in fixing the monthly income of the claimant at Rs.12,000/-p.m. In the absence of documentary evidence and it is reasonable to take only at Rs.10,000/-p.m. as monthly income and, therefore, the award needs to be proportionately reduced.

4. Per contra, learned counsel appearing for the claimant submits that there was actual proof adduced before the Claims Tribunal to prove the monthly income and therefore, interference is not warranted.

5. A perusal of the records reveal that the claimant took treatment at Dr.Kamatchi Hospital for two days, i.e. 07.02.2013 and 08.02.2013 and later he had taken treatment as in-patient for a period of three weeks at Government General Hospital, Chennai from 08.02.2013 to 02.03.2013. The Doctor has assessed the disability as 50%. However, on the basis of the medical records, the Tribunal fixed the functional disability at at 30%.

6. Though it is contended by the learned counsel for the appellant that the monthly income should have been fixed at Rs.10,000/- and not Rs.12,000/-, it is evident from the records that the claimant was terminated from service on account of lack of ability to work. This definitely shows that the claimant, due to the accident, has been put to great inconvenience and is not in a position to earn his livelihood and his future has been

doomed. Therefore, considering the entire factual matrix, the Tribunal has fixed the monthly income at Rs.12,000/-, which, in the considered opinion of this Court, does not warrant interference.

7. Though the Tribunal has fixed the functional disability at 30% and quantified the compensation, however, this Court feels that the functional disability needs to be fixed at 25%. Accordingly, fixing the monthly income of the claimant at Rs.12,000/- and adopting multiplier of 18, which is the proper multiplier to be adopted, the loss of earning capacity is quantified at Rs.6,48,000/-, for functional disability of 25%. Accordingly, the compensation under the head loss of earning capacity is reduced from Rs.7,77,000/- to Rs.6,48,000/-.

8. Insofar as the award of transport expenses to the tune of Rs.50,000/-, which is said to be excessive, this Court, considering the injuries sustained by the claimant deems that a sum of Rs.30,000/- under the head transport expenses would be a just and reasonable compensation.

9. The compensation on the ground of medical expenses is supported by medical bills and therefore, it is confirmed.

10. Insofar as the compensation awarded under the head disability is concerned, the amount of Rs.1,50,000/- is on the higher side. This Court feels that an amount of Rs.1,00,000/- under the said head would be just and reasonable compensation. Accordingly, a sum of Rs.1,00,000/- is awarded under the said head. However, the attender charges awarded at Rs.6,000/- is on the lower side and, accordingly, the same is enhanced to Rs.10,000/-. Insofar as the compensation awarded under other heads are concerned, the compensation cannot be said to be unreasonable or excessive and, accordingly, the same is confirmed.

11. Accordingly, the civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal is restructured as under :-

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Loss of earning capacity 12,000 x 12 x 30% x 18/100	Rs. 6,48,000/-
Transport and nourishment	Rs. 30,000
Medical expenses	Rs. 71,000
Disability	Rs. 1,00,000
Loss of earning during treatment period	Rs. 24,000
Attender charges	Rs. 10,000
Pain and sufferings	Rs. 50,000
Amenities	Rs. 25,000
Total	Rs. 9,58,000

C.M.A. No.2817 of 2016

12. The claimant, V.Balakrishnan, a minor, aged 17 years, carpenter by profession, earning a sum of Rs.10,000/- p.m., met with an accident on 07.02.2013, in which he sustained severe head injury, fracture of maxilla with right zygomatic complex fracture, mandible fracture, facial injuries and multiple injuries all over body.

13. Contending that the injuries resulted in loss of earning as well as loss of earning capacity, the claimant has filed the claim petition represented by guardian, claiming a sum of Rs.15,00,000/- as compensation.

14. The Tribunal, on consideration of materials, both oral and documentary, has passed the award for a sum of Rs.6,87,600/- under the following heads :-

Transportation, nourishing food and miscellaneous expenditure	50000
Medical expenses	101000
Disability	120000
Loss of earning during the period of treatment	16000
Loss of earning capacity	3,45,600
Attender charges	5000
Damages for pain, suffering and mental agony	25000
Loss of amenities	25000
Total compensation is fixed at	6,87,600

15. Learned counsel appearing for the appellant submitted that the compensation awarded by the Tribunal is excessive and it requires proportionate reduction. It is further submitted by the learned counsel for the appellant that the Tribunal has erred in awarding both disability compensation and compensation towards loss of earning when the disability is shown to be to an extent of 20%. Accordingly, the same requires modification.

16. Per contra, learned counsel appearing for the claimant submits that the Tribunal has considered the evidence in proper perspective and has quantified the compensation and, therefore, no interference is called for with the order passed by the Tribunal.

17. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the judgment of the Tribunal.

18. A perusal of the disability certificate reveals that the claimant has suffered only mandible fracture and fracture of maxilla with right zygomatic complex. No doubt the claimant has suffered disfiguration on his face, but the same cannot be a ground to award compensation under loss of earning capacity. The said injury would have no impact on the earning capacity of the claimant. Therefore, as rightly contended by the learned counsel for the insurance company, the compensation awarded under the head loss of earning capacity deserves to be set aside and, accordingly, the same is set aside. However, the amount of Rs.16,000/- awarded towards loss of earning during the period of treatment requires enhancement. Accordingly, the same stands enhanced to Rs.24,000/-. Similarly, the amount of Rs.25,000/- awarded towards pain and suffering is also on the lower side. This Court feels that a sum of Rs.52,500/- under the above head would be just and reasonable compensation.

19. Insofar as the compensation awarded towards medical expenses, transport expenses, amenities cannot be said to be on the higher side and, accordingly, the same are confirmed. However, the compensation at Rs.5,000/- awarded under the head 'Attender Charges' is on the lower side. This Court feels that a sum of Rs.25,000/- under the said head would be a just and reasonable compensation. This Court further awards a sum of Rs.2,500/- towards damage to cloth and materials.

20. Accordingly, this civil miscellaneous appeal is allowed in part, modifying the award passed by the Tribunal from Rs.6,87,000/- to Rs.4,00,000/- and the compensation awarded under the different heads stand restructured as hereunder :-

Transportation & Nourishment	Rs. 50,000/-
Medical expenses	Rs. 1,01,000/-
Disability	Rs.1,20,000/- -
Loss of earning during the period of treatment	Rs.24,000/-
Attender charges	Rs. 25,000/-
Pain, suffering	Rs. 52,500/-
Loss of amenities	Rs. 25,000/-
Damage to Cloth & Materials	Rs. 2,500/-
Total compensation is fixed at	Rs.4,00,000/- -

21. In the result, both the civil miscellaneous appeals are allowed in part to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

22. The appellant/insurance company is directed to deposit the award amount in both the appeals, as quantified by this Court above, along with interest at 7.5% p.a. from the date of claim petition till the date of deposit, less the amount, if any, already deposited to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall transfer the same directly to the bank account of the respective claimants through RTGS within a period of two weeks thereafter. If the insurance company had already deposited the entire award amount along with interest as quantified by the Tribunal, the excess portion of the amount shall be refunded back to the appellant/insurance company.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

vsi2/GLN

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To

1. Motor Accidents Claims Tribunal, II Court of Small Causes,
Chennai

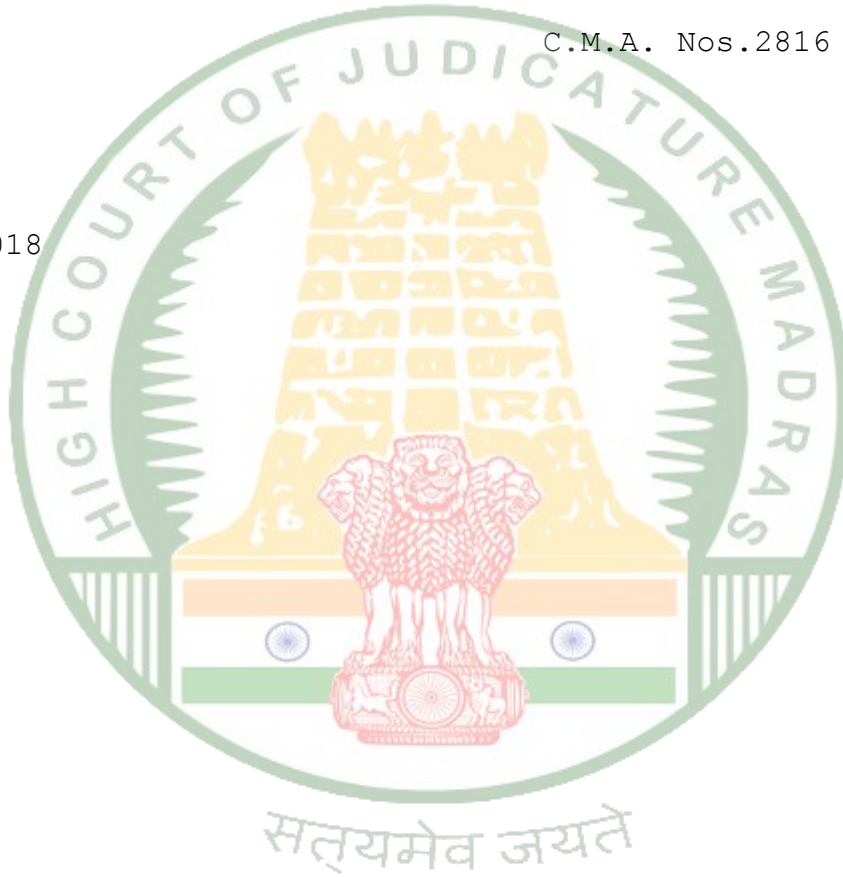
2. The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.K.Suryanarayanan Advocate sr 53575

+2 ccs to M/s.M.B.Gopalan Associates sr 53533 & 53534

C.M.A. Nos.2816 and 2817 of
2016

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