

In the High Court of Judicature at Madras

Dated 19.09.2017

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The Honourable Mr. Justice R. SUBBIAH
AND
The Honourable Mr. Justice P. VELMURUGAN

C.M.A.No.2705 of 2017
and
C.M.P.Nos.15156 & 12875 of 2017

Cholamandalam MS General
Insurance Company Limited.,
rep.by its Branch Manager, Tiruppur,
Chidambaam Complex,
Kumaran Road,
Tiruppur-641 601. ..Appellant/2nd Respondent

..vs..

1.Chandrasekaran @ Sekar ..1st Respondent/Petitioner
2.Narayanaraj ..2nd Respondent/1st respondent

Civil Miscellaneous Appeal has been filed under Section 173
of Motor Vehicles Act, 1988, against the judgment and decree,
dated 06.08.2015, made in M.C.O.P.No.8 of 2012 on the file of
the Motor Accidents Claims Tribunal, Mannargudi.

For Appellant : Mr.N.Vijayaraghavan
For Respondents : Mr.Jawahar

JUDGMENT

R. SUBBIAH, J.,

This appeal has been filed by the Insurance Company
challenging the quantum of compensation awarded by the Motor
Accidents Claims Tribunal Mannargudi, in and by award dated
06.08.2015 in M.C.O.P.No.8 of 2012.

2.Since the appeal has been filed questioning the quantum of
compensation alone, 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 before the Tribunal. It is the case of the claimant before the Tribunal that on 02.11.2009 at about 10.00 pm, he was travelling in a Mahendra Champion Auto bearing Reg.No.TN 57 H 9535, which was driven by the 2nd respondent herein. When the said auto came on Kumaran Main Road, from south to north direction, the driver of the auto/2nd respondent herein suddenly turned the auto to his right side at hectic speed, in a rash and negligent manner, due to which the said auto capsized. In the said accident, the 1st respondent/claimant, who was travelling in the said auto, sustained fracture injuries on his left leg below the knee, right leg thigh and abrasion all over his body. Immediately, he was taken to a private hospital viz., M/s.Deepa Hospital, Tiruppur, wherein he took treatment as inpatient for 33 days and underwent surgery. He had spent more than Rs.2 lakhs towards medical expenses alone. Hence, he made a claim for a sum of Rs.10 lakhs as compensation.

4.The Insurance Company resisted the claim made by the claimant, by filing a counter affidavit, stating that the Insurance Company is not liable to pay the compensation.

5.Before the Tribunal, in order to prove his claim, on the side of the claimant, he examined himself as P.W.1, besides examining one Dr.Rajagopal and one Mathiyazhagan as P.W.2 & P.W.3 and marked 13 documents as Ex.P.1 to Ex.P.13. On the side of the Insurance Company, neither oral evidence nor documentary evidence was adduced.

6.The Tribunal, after analysing the entire evidence, has come to the conclusion that the accident is the result of the rash and negligent act of the driver of the auto bearing Reg.No.TN 57 H 9535, insured with the appellant/Insurance Company. By coming to such a conclusion, the Tribunal made the calculation and passed an award for a total sum of Rs.3,79,719/-. The breakup details of the compensation amount awarded by the Tribunal are as follows_

1)Transportation expenses	= Rs. 98,400/-
2)Disability at 51%	= Rs.1,02,000/-
3)Pain and sufferings	= Rs. 52,000/-
4)Extra-nurishment	= Rs. 25,000/-
5)Permanent Loss of income	= Rs.9,36,360/-
6)Loss of income during treatment	= Rs. 16,500/-
7)Medical Expenses	= Rs.1,49,459/-
Total	= Rs.13,79,719/-

Aggrieved over the same, the Insurance Company has been filed the present appeal.

7. Now, it is the submission of the learned counsel for the Appellant/Insurance Company that the Doctor-P.W.2 had assessed the disability suffered by the claimant at 51%. The Tribunal has awarded a sum of Rs.1,02,000/- at the rate of Rs.2,000/- per percentage of disability. That apart, the Tribunal has awarded a sum of Rs.9,36,360/- towards permanent loss of income by fixing a sum of Rs.9,000/- as monthly loss of income. It is the submission of the learned counsel for the appellant/Insurance Company that when the Tribunal has awarded a sum of Rs.9,36,360/- for loss of income, the Tribunal ought not to have awarded the sum of Rs.1,02,000/- under the head of Disability. Further, while making the calculation to award compensation under the head of loss of income, the Tribunal has wrongly applied the multiplier 17 instead of 15. Therefore, according to the learned counsel for the appellant/Insurance Company, the compensation amount awarded by the Tribunal needs proper modification.

8. Per contra, the learned counsel appearing for the claimant made his submissions supporting the award passed by the Tribunal.

9. Keeping the submissions made on either side, We have carefully gone through the materials available on record. We find that there is no dispute with regard to the assessment of the disability suffered by the claimant. The only grievance of the learned counsel for the appellant/Insurance Company is that when the Tribunal has chosen to award the compensation under the head of loss of income by applying multiplier method, it ought not to have awarded compensation under the head of disability. We find some force in the said submission made by the learned counsel for the appellant/Insurance Company, because awarding the compensation amount under the head of Disability as well as loss of income cannot go together. When the Tribunal has chosen to award the compensation under the head of permanent Loss of Income, it ought not to have awarded the amount simultaneously under the head of Disability. Hence, the sum of Rs.1,02,000/- (@ Rs.2,000/- per percentage of disability) awarded by the Tribunal is hereby set aside.

10. Further, We find that at the time of accident, the claimant/victim was aged about 32 years. Hence, as per second schedule of Motor Vehicles Act, the correct multiplier that has to be applied in this case is 16. But, the Tribunal has wrongly applied the multiplier 17. Hence, the compensation amount awarded by the Tribunal under the head of future Loss of Income needs proper modification. If a sum of Rs.9,000/- is fixed as monthly income of the claimant, as fixed by the Tribunal, and if

multiplier 16 is applied, the compensation amount works out to Rs.8,81,280/- (9000 x 12 x 16 x 51% = 8,81,280), which would be just and proper compensation under the head of future Loss of Income.

11. That apart, We find that the Tribunal has not awarded any amount under the loss of amenities. In view of the disability suffered by the claimant/victim, he would find it very difficult to carry on his normal avocation as he was doing before the accident. Hence, a sum of Rs.27,000/- is hereby awarded for Loss of Amenities. As the compensation amounts awarded by the Tribunal under the other heads appear to be just and proper, the same remain unaltered. Consequently, the total compensation amount of Rs.13,79,719/- awarded by the Tribunal is hereby modified and reduced to Rs.12,50,000/-. The breakup details of the same are as follows_

1)Transportation expenses	= Rs. 98,400/-
2)Pain and sufferings	= Rs. 52,000/-
4)Extra-nurishment	= Rs. 25,000/-
5)Permanent Loss of income	= Rs.8,81,280/-
6)Loss of income during treatment	= Rs. 16,500/-
7)Medical Expenses	= Rs.1,49,459/-
8)Loss of Amenities	= Rs. 27,000/-
Total	= Rs.12,49,639/-

(Rounded off to Rs.12,50,000/-)

12. In fine, the appeal is partly allowed and the compensation amount of Rs.13,79,719/- (Rupees Thirteen Lakhs Seventy Nine Thousand Seven Hundred and Nineteen Only) awarded by the Tribunal is hereby modified and reduced to Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand Only). The appellant/Insurance Company is directed to deposit the entire modified compensation amount, after deducting the amount if any already deposited, with proportionate interest as awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is entitled to withdraw the same by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petitions are closed.
No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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Copy to

The Motor Accidents Claims Tribunal,
Mannargudi.

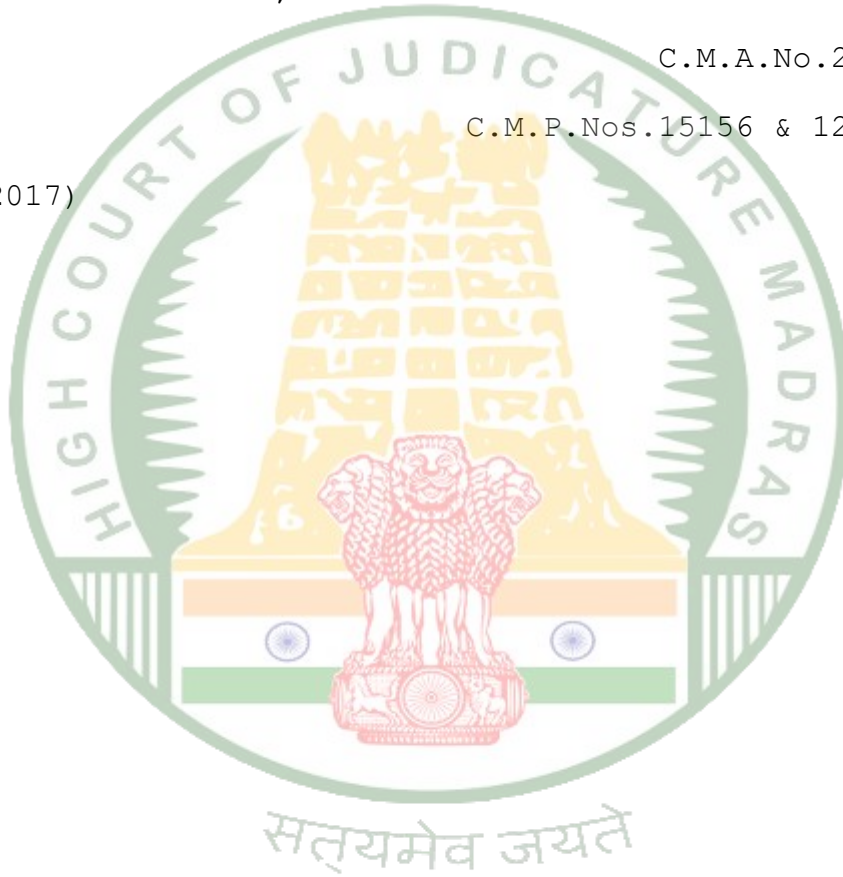
+ 1 cc to M/s. M.S.Gopalan, Associates, Sr.68975

+ 1 cc to Mr. B. Jawahar, Advocate Sr.69047

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