

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. Nos.271 and 272 of 2017
and
CMP.Nos.1976 & 1977 of 2017

C.M.A.No.271 of 2017

The New India Assurance Co., Ltd.,
29, Paramathy Road, Namakkal.

... Appellant /2nd Respondent

Versus

1. Miniappan @ Munian

... 1st Respondent/Petitioner

2. B.Bakkiam

... 2nd Respondent/1st respondent

C.M.A.No.272 of 2017

The New India Assurance Co., Ltd.,
29, Paramathy Road, Namakkal.

... Appellant /2nd respondent

Versus

1.Sivakami

... 1st respondent/Petitioner

2.B.Bakkiam

... 2nd Respondent/1st Respondent

Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 14.06.2011 made in M.C.O.P.Nos.476 & 477 of 2008 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Rasipuram.

For appellant : Mr.M.Krishnamoorthy in both CMAs

For Respondents: Mr.Ma.Pa.Thangavel for R-1
in both CMAs

C O M M O N J U D G M E N T

Challenging the quantum of compensation awarded by the Claims Tribunal, in M.C.O.P.Nos.476 and 477 of 2008, the

Insurance Company has filed these Civil Miscellaneous Appeals.

2. There are two cases arising out of the same accident, filed by the Claimants Miniappan and Sivakami in M.C.O.P.Nos.476 and 477 of 2008 respectively.

3. The claimant, Mr. Miniappan, in M.C.O.P.No.476 of 2008, aged about 42 years, a coolie, earning a sum of Rs.7,000/- per month, suffered injuries in the accident that occurred on 30.12.2007. In respect of the same accident, the other claimant Sivakami, in M.C.O.P.No.477 of 2008, aged 40 years, also employed as a coolie, earning a sum of Rs.5,000/- also suffered injuries.

4. In respect of the claim made in M.C.O.P.No.476 of 2008, the claimant Miniappan, has suffered the following injuries:-

- (i) 3 X 1 cm lacerated wound at forehead
- (ii) 3 X 1 cm lacerated wound and right side cheek
- (iii) Lacerated wound Right side of upper lip
- (iv) Infected 5 X 1 cm lacerated wound at clavicle of left hand
- (v) 3 X 2 cm lacerated wound at left chest
- (vi) 1 X 1 cm Abrasion Right wrist
- (vii) 3 X 2 cm contusion Right shoulder
- (viii) 10 X 3 cm periverted hematare
- (ix) Contusion left hip
- (x) Contusion Right hip

X Rays pelvis - Acetabular fracture Right superior and interior public ray in fracture, left side.

Injuries 9.10 are grievous and others simple in nature.

5. From the medical report it is evident that the claimant Miniappan suffered fracture of the hip bone on the right side as well as on the left side. The doctor has assessed the disability at 35% and has opined that the disablement would have a serious impact on the avocation of the claimant and the consequent earning capacity. Therefore, the Tribunal has adopted the multiplier method of quantification. In the absence of any documentary evidence to substantiate the income, the Tribunal notionally fixed the monthly income at Rs.4000/- and adopted multiplier of 14, while fixing the disability at 29% and quantified the compensation towards loss of earning capacity at Rs.1,94,880/= [4000X12X14X29%]. The Tribunal has awarded a sum of Rs.10,000/- towards transport expenses; Rs.5000/- towards Extra nourishment; Rs.12,000/- towards medical expenses and Rs.20,000/- towards pain and suffering in all totalling to a sum of Rs.2,41,880/= with interest at 7.5% per annum from the date of petition till the date of deposit.

6. The Claimant in M.C.O.P.No.477 of 2008 is also a coolie. She suffered the following injuries:-

1. Public Rami Fracture Right side.
2. Contusion abdomen.

7. The Doctor who examined her, certified the disability at 30%. Considering the avocation of the claimant, In the absence of any documentary evidence to substantiate the income, the Tribunal notionally fixed the monthly income at Rs.3,000/- and adopting multiplier of 15 and fixing the disability at 25% has awarded a sum of Rs.1,35,000/- towards Loss of earning capacity ($\text{Rs.3000} \times 12 \times 15 \times 25\%$). A sum of Rs.1,000/- was awarded towards Transport expenses; Rs.5,000/- was awarded towards Extra Nourishment; Rs.18,000/- was awarded towards Medical expenses (which was supported by bills) and a sum of Rs.20,000/- has been awarded towards Pain and sufferings. In all, the Tribunal awarded a sum of Rs. 2,32,880/- as compensation.

8. Learned counsel appearing for the appellant contended that the tribunal should not have relied upon the evidence of doctor in order to assess the percentage of disablement. It is further submitted that the Tribunal erred in fixing the disability at 29% and 25% respectively and the awarded compensation on the basis of the said assessment by adopting multiplier method. It is the submission of the learned counsel that the alleged disability would not affect the earning power and therefore, the award under the head loss of earning capacity by adopting multiplier method is not warranted.

9. Though very many grounds have been raised in the appeals assailing the order of the Tribunal, however, at the time of argument, learned counsel appearing for the appellant restricted his argument only insofar as the quantum of compensation awarded by the Tribunal and, therefore, this Court is dealing only with the said issue pertaining to quantum of compensation.

10. In order to appreciate the contentions advanced above, it is necessary to have a perusal of the details of the injuries and the period of treatment undergone by the claimant. It is also to be pointed out that the claimants are said to be coolies and whether this disability would affect the earning capacity of the claimants.

11. At the time of accident, the claimants were aged 42 years and 40 years and he suffered multiple injuries all over the body. The Tribunal accepting the age of the claimants on the basis of documentary evidence, in the absence of any documentary evidence to substantiate the income, has notionally fixed the income of the claimants and taking into account the

injuries sustained by the claimants and the difficulties faced by the claimant in discharging their day-to-day activities and also the impact of the injuries on the future life and earning capacity of the claimants, adopting the multiplier method, quantified the loss of earning capacity at Rs.1,94,880/- and Rs.1,35,000/- by fixing the percentage of disability at 29% and 25% respectively. The contention of the appellant that the percentage of disability fixed is on the higher side as the disability suffered by the claimant does not hamper his earning power is totally misconceived. On the basis of medical opinion, the Tribunal having analysed the evidence and fixed the disability at 29% and 25% respectively, and has further come to the conclusion that there is definitely loss of earning capacity, the contention of the appellant to the contra, without any material cannot be sustained. The said approach of the Tribunal, in the considered opinion of this Court, cannot be found fault with. The Tribunal has conservatively awarded only a sum of Rs.1,94,880/- and Rs.1,35,000/- respectively, under the head loss of earning capacity, the same deserves to be sustained.

12. Insofar as the award under the other heads are concerned, a careful perusal of the award reveals that the Tribunal has conservatively awarded compensation, which are just and reasonable and cannot be termed to be excessive.

13.. In the result, these Civil Miscellaneous Appeals are dismissed, confirming the Judgement and Decree dated 14.06.2011 made in M.C.O.P.Nos.476 & 477 of 2008 on the file of the Motor Accident Claims Tribunal, (Subordinate Judge), Rasipuram. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

14. The appellant is directed to deposit the entire amount of compensation in both the appeals, along with interests and costs, as quantified by the Tribunal, 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 amount directly to the bank account of the respective claimants through RTGS within a period of two weeks thereafter.

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Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

arr/GLN

To

1.The Subordinate Judge,
The Motor Accidents Claims Tribunal
Subordinate Judge), Rasipuram

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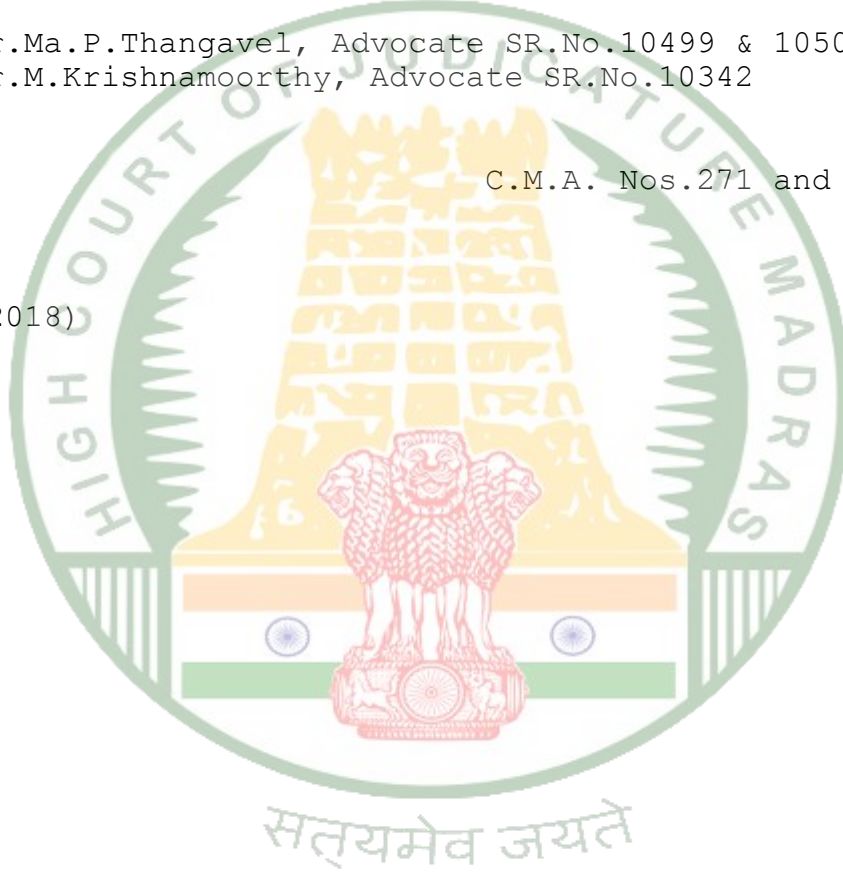
The Section Officer, VR Section,
High Court, Madras.

+2cc to Mr.Ma.P.Thangavel, Advocate SR.No.10499 & 10500

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.10342

C.M.A. Nos.271 and 272 of 2017

VGI (CO)
GN(28/04/2018)



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