

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.M.A. No. 30 of 2017

&

C.M.P. No.5327 of 2017

Bharati AXA General Insurance Company Ltd.,
Metro Plaza, No. 162,
Anna Salai,
Chennai - 600 002. Appellant/2nd Respondent

Vs.

1. P. Venkatesh @ Venkatesan.Ist Respondent/Claimant
2. BMK Express Automobiles(P) LTD.,
No.96/100, Rajiv Gandhi Salai, (OMR),
Sholinganallore,
Chennai - 600 119.2nd Respondent/Ist Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of MV Act 1988 as against the Judgment and decree dated 13.04.2016 made in M.C.O.P. No. 5740 of 2013 on the file of Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant :: Mr.Srinivasan Ramalingam.
For Respondents :: Mr. Amar D. Pandiyan for R1.
Mr. S. Selva kumar for R2.

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the award of a sum of Rs.7,12,000/- as compensation to the 1st respondent for sustaining 50% disability in the accident, which occurred on 09.08.2012, when the 1st respondent, who was riding his bicycle, was hit by the car insured with the appellant Insurance Company.

2. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent. Since the 2nd respondent remained ex parte before the Tribunal, notice to 2nd respondent is dispensed with as per the judgment of the Full Bench of Madhya Pradesh High Court rendered in Mrs. Jamuna Bai V. Chhote Singh reported in I (2004) Acc. 190 (FB).

3. A perusal of the judgment of the Tribunal would disclose that the injured/1st respondent sustained head injury and diffused axonal injury and he also under went tracheotomy on 04.09.2012 while he was taking treatment as an in-patient from 29.08.2012 to 24.09.2012, for a total period of 28 days, in Government General Hospital, as proved by Ex- P3, Discharge Summary. PW2 Doctor, has adduced evidence that the claimant was suffering from occasional head ache, vomitting, giddiness, transient amnesia, weakness of upper limb muscles, eptio memory deficit, in-coordination of limb movements and further, due to tracheotomy, the claimant sustained speech hoarseness. Taking into consideration all these aspects, PW2 assessed the disability at 40% and for disfigurement 10% and totally, 50% was determined to be partial and permanent disability sustained by the claimant. Following the judgement of this Court rendered in National Insurance Company Vs G. Ramesh and Another reported in 2013 (2) TN MAC 583, sum of Rs.3,000/- was awarded for each percent of disability and totally, a sum of Rs.1,20,000/- was awarded towards "Partial & Permanent Disability". Since the said amount is on the higher side, the same is reduced to 60,000/- as the 1st respondent has already been awarded a sum of Rs.4,38,750/- towards "Loss of Future Earning Capacity".

4. As far as the amount awarded towards "Loss of Future Earning Capacity" is concerned, in view of head injury sustained by the 1st respondent/claimant and the consequent disfigurement, the said amount is reasonable and it is confirmed. So also, the amounts awarded under the other heads, being reasonable, are confirmed. Therefore, the total compensation, now payable to the 1st respondent/claimant works out to

1.	Transportation, Nourishing Food & Miscellaneous Expenditure::	Rs. 50,000/-
2.	Medical Expenses	:: Rs. 10,000/-
3.	Attender Charges	:: Rs. 10,000/-
4.	Disability	:: Rs. 60,000/-
5.	Loss of earning during the period of treatment	:: Rs. 13,000/-
6.	Loss of earning capacity/ Loss of earning power	:: Rs.4,38,750/-
7.	Damages for pain, suffering and mental agony	:: Rs. 50,000/-
8.	Loss of Amenities	:: Rs. 20,000/-
	Total	:: Rs. 6,51,750/-

4. Further, the Tribunal, taking into consideration the fact that the driver of the car did not possess an effective valid licence, at the time of accident, ordered pay and recovery and the same is confirmed. The rate of interest awarded by the Tribunal, @ 7.5% per annum, also remains intact.

5. In the result, the Civil Miscellaneous Appeal is partly allowed reducing the amount awarded under the head "Disability" alone from Rs.1,20,000/- to Rs.60,000/- and confirming the award of the Tribunal on all other aspects.

6. Since the entire award amount has already been deposited by the appellant/Insurance Company, along with interest and costs, the Tribunal is directed to transfer the compensation amount payable, as per the judgment passed by this Court today, with proportionate interest and costs, through RTGS, to the account of the 1st respondent/claimant and the balance amount shall be paid to the appellant/Insurance Company. The said exercise has to be done within a period of two weeks from the date of receipt of a copy of this order. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bri/nv

To

The I Judge, Court of Small Causes,
The Motor Accidents Claims Tribunal,
Chennai.

+1cc to Mr.Srinivasan Ramalingam, Advocate Sr.20445
+1cc to Mr.Amar D.Pandiyam, Advocate Sr.20294

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