

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM :

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

CMA.No.963 of 2017

Shriram General Insurance Company Ltd
10003 E8, RIICO Industrial Area,
Sitapura, Jaipura, Rajasthan-302 022 ... Appellant

Vs.

1. Narayanan
2. S.Gnanavel
3. The Managing Director
Tamil Nadu State Transport Corporation Ltd
No.12, Ramakrishna Road, Salem ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.04.2014 made in M.C.O.P.No.2538 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Krishnagiri.

For Appellant : Mr.S.Dhakshinamoorthy
For Respondent-1 : Mr.Mukund R.Pandiyar

JUDGMENT

This appeal arises against the order passed in M.C.O.P.No.2538 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge) Krishnagiri.

2. This is a case of injury. On 07.08.2011 at about 10.15 hours, when the claimant and two others were travelling in a van bearing Registration No.TN-24-A-5001, the TNSTC bus bearing Registration No.TN-29-N-2269 belonging to the third respondent herein, came in a rash and negligent manner from the opposite direction and dashed against the van, due to which the claimant and others sustained injuries. Hence, the present claimant filed a claim petition before the Tribunal seeking a sum of Rs.24,62,500/-, which was restricted to Rs.7,00,000/- as compensation for the injuries sustained by him, against which, the Tribunal has passed an award for Rs.6,40,191/- payable with interest @ 6% per annum on the following heads.

Heads	Amount (in Rs.)
Loss of earning power	Rs.4,60,800/-
Pain and sufferings	Rs.50,000/-
Nutrition and transport	Rs.20,000/-
Medical expenses	Rs.50,391/-
Future medical expenses	Rs.25,000/-
Attender Charges	Rs.10,000/-
Partial Loss of Income	Rs.24,000/-
Total	Rs.6,40,191/-

3. Heard the learned counsel for the appellant/Insurance Company and the learned counsel for the first respondent-claimant and perused the materials available on record.

4. A perusal of the award would go to show that the Tribunal has fixed monthly income @ Rs.6,000/- and assessed the disability @ 40% and by adopting the multiplier 16, the Tribunal has awarded a sum of Rs. 4,60,800/- under the head "loss earning capacity". The Doctor has certified 50% as partial permanent disability suffered by the Claimant, whereas, the Tribunal had fixed 40% as noted above and decided the loss of earning power, taking into consideration the fracture in right lateral condyle in right elbow. It was complained that there was a functional disability for the claimant, who is a Carpenter. But, considering the fact that there was only a fracture and which is also now set right, it would be appropriate to consider the functional disability at 25%. Accordingly, the loss of earning is now brought down to Rs.2,88,000/- [Rs.6,000 x 12 x 6]. In the absence of any evidence that the claimant required a future treatment and till now, there was no requirement for the medical treatment, the award of Rs.25,000/- under future medical expenses is also set aside. So far as the other heads are concerned, the award passed by the Tribunal is confirmed. Accordingly, the compensation awarded by the Motor Accident Claims Tribunal is revised as follows:-

Heads	Amount (in Rs.)
Loss of earning power	Rs.2,88,000/-
Pain and suffering	Rs. 50,000/-
Nutrition and transport	Rs. 20,000/-
Medical expenses	Rs. 50,391/-
Future medical expenses	---
Attender Charges	Rs. 10,000/-

Heads	Amount (in Rs.)
Partial Loss of Income	Rs. 24,000/-
Total	Rs. 4,42,391/-

5. In the result, this appeal is partly allowed and Award dated 29.04.2014, in M.C.O.P.No.2538 of 2013 is reduced from Rs.6,40,191/- to Rs. 4,42,391/- with 7.5 % interest per annum from the date of claim petition till the date of payment. The excess compensation, if any paid by the appellant/Insurance Company, shall be withdrawn by them, after adjusting the compensation now awarded. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

srn

To

1.The Motor Accident Claims Tribunal
(Special Sub Judge) Krishnagiri.

+1cc to Mr.S. Dhakshnamoorthy, Advocate Sr. 18403

+1cc to Mr. Mukund R. Pandiyan, Advocate Sr. 18607

CMA.No.963 of 2017

VSN(CO)
VR(07/04/2017)

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