

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 04.08.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.Nos.3207 & 3208 of 2013
and
M.P.No.1 of 2015 in C.M.A.Nos.3207 & 3208 of 2013
and
C.M.P.Nos.4135 & 4136 of 2016

M/s.New India Assurance Co. Ltd.,
Sri Balaji Towers, II Floor,
No.74, G.S.t. Road, Guindy,
Chennai-600 032. ... Appellant in both CMAs/
2nd Respondent

Vs.

1.Mr.T.Arumumar ... 1st respondent in CMA.3207/2017/
Petitioner
2.Mr.B.Kishore ... 1st respondent in CMA.3208/207/
Petitioner
3.Mr.V.K.P.Narayanan ... 2nd respondent in both CMAs/
1st Respondent

Civil Miscellaneous Appeals have been filed under Section 173 of Motor Vehicles Act, against the judgment and decree dated 20.12.2011 in M.C.O.P.Nos.3452 & 3453 of 2009, respectively, passed by the Motor Accident Claims Tribunal, (III Court of Small Causes), Chennai.

For Appellant : Mr.M.B.Raghavan
For Respondents: Mr.K.Varadha Kamaraj
(For R1 in both appeals)
R2- -exparte

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COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

The above appeals have been filed by the Insurance Company as against the common award in M.C.O.P.Nos.3452 & 3453 of 2009, dated 20.12.2011, passed by the Motor Accidents Claims Tribunal, (III Small Causes Court), Chennai. Since these appeals arise out of common award, they are disposed of by way of this common judgment.

2.It is represented by the learned counsel for the appellant/Insurance Company that both the appeals have been filed challenging the quantum of compensation alone. Hence, it is not necessary for this Court dealt with the other aspects of the award passed by the Tribunal.

3.The 1st respondent in both the appeals are the claimants before the Tribunal. For the sake of convenience, the 1st respondent in C.M.A.No.3207/2013 viz. T.Arunkumar will be hereinafter referred to as 1st claimant and the 1st respondent in C.M.A.No.3208/2013 viz., B.Kishore will be hereinafter referred to as 2nd claimant.

4.It is the case of the claimants before the Tribunal that on 02.09.2008 at 15.00 hours, when the 2nd claimant-Kishore was riding his Motor cycle bearing Reg.No.TN-21-P-2554, in which 1st claimant-Arunkumar was travelling as pillion rider, on Adhanur Koot Road near Check Post, Kanchipuram District, the lorry bearing Reg.No.TN-22-AR-5999, belonging to the 2nd respondent in both the appeals, insured with the appellant-Insurance Company, came from opposite direction in a rash and negligent manner and dashed against the two-wheeler, which the 2nd claimant was riding and caused the accident. In the said accident, both the claimants sustained grievous injuries. Hence, they made separate claim petitions before the Tribunal claiming Rs.35 lakhs and Rs.20 lakhs respectively.

5.The Insurance Company opposed the claims of the claimants by filing a common counter affidavit, contending that the accident was occurred only due to the rash and negligence act of the claimants.

6.A Joint trial was conducted and common evidence was recorded by the Tribunal in M.C.O.P.3452/2009. Before the Tribunal, in order to prove their case, the 2nd claimant examined himself as P.W.1, the 1st claimant examined himself as P.W.2, besides examining two doctors as P.W.3 & P.W.4 and marked 26 documents as Ex.P.1 to Ex.P.26. On the side of the Insurance

Company, neither oral nor documentary evidence was adduced.

7.The Tribunal, after analysing the entire evidence, has passed an award for a sum of Rs.27 lakhs in M.C.O.P.3452/2009 (CMA.3207/2013) and similarly passed an award for a sum of Rs.19,50,000/- in M.C.O.P.3453/2009 (CMA.3208/2013). Challenging the quantum of compensation awarded by the Tribunal, the Insurance Company has come forward with the present appeals.

8.Heard the learned counsel appearing for the appellant/Insurance company as well as the learned counsel appearing for the claimants and perused the materials available on record.

C.M.A.No.3207 of 2013 (M.C.O.P.No.3452/2009)

9.So far as the case of the 1st claimant-Arunkumar is concerned, it is the case of the 1st claimant that at the time of accident, he was travelling in the two wheeler as a pillion rider and on account of the accident, he sustained fracture of both bones of right forearm and other injuries. In order to prove the disability suffered by him, he has marked the Discharge Summary as Ex.P.11 and examined the two Doctors as P.W.3 & P.W.4. As per the Discharge Summary-Ex.P.11, the 1st claimant has sustained the following injuries-

- (1)Left Temporal EDH with Mass effect / Midline shift
- (2)Bifrontal contusion with depressed comminuted fracture of frontal bone with Brain Herniation
- (3)Multiple ACF Floor and facial fractures
- (4)Fracture both bones right forearm.

Further, evidence on record would show that the 1st claimant-Arunkumar took treatment in various hospitals as inpatient for a total period of 46 days. P.W.3-Doctor has assessed the disability suffered by the 1st claimant at 100% and issued Disability Certificate-Ex.P.25. That part, P.W.4-Doctor has also assessed the disability suffered by the 1st claimant at 20% for fracture of frontal bone with fracture of upper lid. Thus, P.W.3 & P.W.4, doctors, totally assessed the disability suffered by the 1st claimant at 120% towards partial permanent disability. However, the Tribunal has fixed the disability suffered by the 1st claimant at 75%. Thereafter, by applying multiplier method and taking the monthly income of the 1st claimant as Rs.10,000/- per month, the Tribunal has awarded a sum of Rs.16,20,000/- under the head of permanent disability alone. That apart, the Tribunal has awarded a sum of Rs.1,00,000/- for loss of income for 10 months, another sum of Rs.25,000/- for Transportation, a sum of Rs.25,000/- for Extra-nourishment, a sum of Rs.7,36,000/- for medical expenses, a sum

of Rs.30,000/- for future medical expenses, a sum of Rs.50,000/- for pain and sufferings, a sum of Rs.14,000/- for attender charges, a sum of Rs.1,00,000/- for loss of amenities and mental agony and another sum of Rs.16,20,000/- for the disability of 75% as permanent. Thus, the Tribunal has passed an award for a total sum of Rs.27 lakhs to the 1st claimant.

10.Now, it is the main grievance of the learned counsel for the appellant/Insurance Company that in order to show that the 1st claimant was earning a sum of Rs.10,000/- per month, no tangible evidence was produced by the 1st claimant before the Tribunal. Under such circumstances, the Tribunal ought not to have fixed the sum of Rs.10,000/- as monthly income of the 1st claimant, which resulted in awarding an exorbitant amount of Rs.16,20,000/- as compensation for permanent disability. That part, according to the learned counsel for the appellant/Insurance Company, the amounts awarded by the Tribunal under the other heads also on the higher side; hence, the quantum of compensation needs proper reduction.

11.Per contra, the learned counsel for the 1st respondent/1st claimant made his submissions supporting the award passed by the Tribunal.

12.From a perusal of the materials available on record, We find that Tribunal, by fixing a sum of Rs.10,000/- as monthly income of the 1st claimant, has made the calculation for the compensation under the head of permanent disability, which appears to be on the higher side. Considering the materials available on record, this Court is of the opinion that by fixing a sum of Rs.9,000/- as monthly income of the 1st claimant, the compensation awarded by the Tribunal could be modified to arrive at a just and reasonable compensation under the head of permanent disability. If a sum of Rs.9,000/- is taken as monthly income of the 1st claimant and multiplier 18 is applied, the amount comes to Rs. 14,58,000/- ($9,000 \times 12 \times 18 \times 75\% = 14,58,000$). Hence, the sum of Rs.16,20,000/- awarded by the Tribunal under the head of permanent disability is hereby reduced to Rs.14,58,000/-.

13.Further, We find that by taking the period of treatment underwent by the 1st claimant as 10 months, the Tribunal has awarded Rs.1,00,000/- for loss of income for 10 months, which appears to be excessive. The loss of income for 6 months alone has to be taken into consideration for awarding compensation, as the 1st claimant was taking treatment as inpatient only for a period of 46 days. Hence, by taking the monthly income of the 1st claimant as Rs.9,000/-, the loss of income for 6 months works out to Rs.54,000/-, which would be the just and fair compensation for the loss of income during the treatment period of the 1st claimant. Similarly, the Tribunal has awarded a

sum of Rs.1,00,000/- towards loss of amenities, which also appears to be on the higher side. Hence, the same is hereby reduced to Rs.75,000/-. Since the sum of Rs.30,000/- awarded by the Tribunal for Future medical expenses is on the lower side, the same is hereby enhanced to Rs.50,000/-. Similarly, the sum of Rs.14,000/- awarded by the Tribunal for attender charges, is hereby enhanced to Rs.25,000/-. Except these modifications, the amounts awarded by the Tribunal under other heads remain unaltered. Consequently, the total compensation amount of Rs.27,00,000/- awarded by the Tribunal is hereby modified/reduced to Rs.25,00,000/-. The breakup details of the modified compensation amount are as follows_

1. Permanent Disability	= Rs.14,58,000/-
2. Loss of income for 6 months	= Rs. 54,000/-
3. Transportation	= Rs. 25,000/-
4. Extra Nourishment	= Rs. 25,000/-
5. Medical Bills	= Rs. 7,36,000/-
6. Future Medical Expenses	= Rs. 52,000/-
7. Pain and Sufferings	= Rs. 50,000/-
7. Attender Charges	= Rs. 25,000/-
8. Loss of Amenities	= Rs. 75,000/-
Total	= Rs.25,00,000/-

C.M.A.No.3208/2013 (M.C.O.P.No.3453/2009)

14.As regards the case of the 2nd claimant-Kishore, in order to prove the injuries sustained by him, the Discharge Summary was marked as Ex.P.2, which would show that the 2nd claimant has sustained the following injuries_

- (1) grade III C Compound comminuted fracture shaft right humerus
- (2) 110% division of right subclavian artery
- (3) Tear of right subclavian vein with haematoma over chest
- (4) Complete right brachial plexus injury with root avulsion C5-C8
- (5) Complete division of right radial nerve at fracture site
- (6) Crush injury of right acromion
- (7) Open right shoulder joint injury
- (8) Open right elbow joint injury
- (9) Severe contusion of right lung with collapse consolidation.

For the above said injuries, the 2nd claimant underwent treatment in various hospitals as inpatient. From a perusal of Ex.P.3 & Ex.P.4, it is seen that the 2nd claimant took treatment as inpatient for a total period of 58 days. P.W.3-Doctor has assessed the disability suffered by the 2nd claimant at 45%. By fixing the disability at 45% and by fixing the monthly salary of the 2nd claimant as Rs.18,080/-, applying multiplier 28, the

Tribunal has awarded a sum of Rs.17,57,376/- as compensation under the head of permanent disability. That apart, the Tribunal has awarded a sum of Rs.54,240/- towards loss of income for three months. Further, the Tribunal has awarded a sum of Rs.10,000/- each for transportation and extra-nourishment and a sum of Rs.38,313 for medical bills, a sum of Rs.25,000/- each under the heads of Future Medical Expenses, Pain & Sufferings and loss of amenities, and another sum of Rs.5,000/- for attender charges; thus, the Tribunal has passed an award for a total sum of Rs.19,50,000/- to the 2nd claimant.

15.Now, it is the grievance of the learned counsel for the appellant/Insurance Company that the Tribunal has fixed the disability suffered by the 2nd claimant excessively at 45%, which resulted in awarding exorbitant amount of Rs.17,57,376/- as compensation for permanent disability; hence, proper reduction has to be made.

16.Upon perusal of the materials available on record and considering the nature of the injuries sustained by the 2nd claimant, this Court is of the opinion that the disability suffered by the 2nd claimant could be fixed at 40% instead of 45% fixed by the Tribunal, as it is the just and proper for awarding compensation under the permanent disability. If 40% disability is fixed, the amount works out to Rs.15,62,112/- (18,080 X 12 X 18 X 40%). Hence, the sum of Rs.17,57,376/- awarded by the Tribunal for permanent disability is hereby reduced to Rs.15,62,112/-.

17.That apart, the Tribunal has taken three months period to award compensation for loss of income during treatment, which is on the higher side. Considering the period of treatment undergone by the 2nd claimant as inpatient, this Court is of the opinion that two months period could be taken into consideration instead of three months, for awarding compensation for the loss of income during treatment. Hence, the sum of Rs.54,240/- awarded by the Tribunal for loss of income for three months is hereby reduced to Rs.36,160/- ($2 \times 18080 = 36,160/-$). Since the sum of Rs.25,000/- awarded by the Tribunal for Future Medical Expenses appears to be on the higher side, the same is hereby reduced to Rs.15,000/-. Similarly, as the sum of Rs.25,000/- awarded by the Tribunal for Pain & Sufferings is on the higher side, the same is hereby reduced to Rs.15,000/-. The Tribunal has awarded Rs.25,000/- of loss of amenities, which is excessive, considering the nature of the injuries. Hence, the same is hereby reduced to Rs.13,000/-. Except these modifications, the amount awarded by the Tribunal under other heads remains unaltered. Consequently, the total compensation amount of Rs.19,50,000/- awarded by the Tribunal is hereby modified/reduced to Rs.17,00,000/-. The breakup details of the same are as follows_

1. Permanent Disability	= Rs.15,62,112/-
2. Loss of income for 2 months	= Rs. 36,160/-
3. Transportation	= Rs. 10,000/-
4. Extra Nourishment	= Rs. 10,000/-
5. Medical Bills	= Rs. 38,313/-
6. Future Medical Expenses	= Rs. 10,000/-
7. Pain and Sufferings	= Rs. 15,000/-
7. Attender Charges	= Rs. 5,000/-
8. Loss of Amenities	= Rs. 13,000/-

Total = Rs.16,99,585/-

The same is rounded off to Rs.17,00,000/-

18. In the result, both the appeals are allowed in part and the the total compensation amount of Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) awarded by the Tribunal in M.C.O.P.No.3452/2009 (C.M.A.No.3207/2013) is modified/reduced to Rs.25,00,000/- (Rupees Twenty Five Thousand only). Similarly, the total compensation amount of Rs.19,50,000/- (Rupees Nineteen Lakhs and fifty thousand only) awarded by the Tribunal in M.C.O.P.No.3453/2009 (C.M.A.No.3208/2013) is modified/reduced to Rs.17,00,000/- (Rupees Seventeen Lakhs only). The appellant/ Insurance company is directed to deposit the entire modified compensation amounts, with proportionate interest @ 7.5% from the date of petition till the date of deposit, after adjusting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimants are entitled to withdraw the same, by making necessary application before the Tribunal.

Consequently, connected Miscellaneous Petitions are closed.
No costs.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To,

1.The Motor Accident Claims Tribunal,
(III Court of Small Causes), Chennai.

2.The Section officer
VR Section High Court Madras

+2 ccs to Mr.M.B.Gopalan Advocate sr 56125,56126

+2 ccs to Mr.K.Varadhakamaraj Advocate sr 55966,55967

C.M.A.Nos.3207 & 3208 of 2013
and
connected MPs

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