



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A(MD)No.1778 of 2013

and

M.P(MD)No.2 of 2013

M/s.Reliance General Insurance Co. Ltd.,
Rep. By its Manager,
Sri Meenakshi Plaza,
I-Floor, Plot No.HIG 55
Eighty Feet Road,
Anna Nagar,
Madurai-625 020.

... Appellant/Respondent No.2

vs.

1.Balasubramanian
2.P.Mary Annibai

... Respondent/Petitioner
... Respondent/Respondent No.1

PRAYER: Civil Miscellaneous Appeals has been filed under Section 173 of Motor Vehicles Act against the fair and decretal order, dated 13.07.2012 made in M.C.O.P.No.525 of 2009, on the file of Motor Accidents Claims Tribunal (III Additional Sub Court), Trichy and allow the Civil Miscellaneous Appeal.

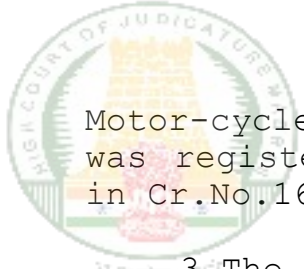
For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.N.C.Ashok Kumar

JUDGMENT

[Judgment of the Court was made by K.KALYANASUNDARAM,J.]

The Insurance Company has preferred this appeal challenging the award passed by the Motor Accidents Claims Tribunal (III Additional Sub Court), Trichy, in MCOP No.525 of 2009, dated 13.07.2012.

2.This is a case of injury. The claimant filed MCOP No.525 of 2009 seeking compensation of Rs.9,85,000/-. The case of the claimant is that when he was riding his Bajaj Platina Motor-Cycle TN.45-AF-5542 near Trichy Junction and waiting at the signal point, a lorry TN-74-U-3917 belonging to the second respondent and insured with the appellant came in a rash and negligent manner and hit against the



Motor-cycle. In the impact, he sustained grievous injuries. A case was registered by the Traffic South Police Station, Trichirappalli in Cr.No.164 of 2008 against the driver of the lorry.

3.The claimant has further stated that he has completed MBA and he was employed in M/s.Appollo Tyres as an Area Officer and was earning Rs.22,000/- per month. However, due to the injuries sustained in the accident, he found difficulties to perform his duties effectively, so, his promotional avenue was closed.

4.The appellant contested the claim by filing counter, disputing the averments made in the claim petition and it is further stated that the accident was due to the negligence of the claimant and the claim was excessive.

5.Before the Tribunal, the claimant examined himself as PW1 and examined one Doctor L.Elangovan as PW2 and marked 13 documents as Ex.P1 to P13. On the side of the Insurance Company, no witness was examined and no document was produced.

6.The claimant has deposed reiterating the grounds raised in the claim petition and produced Ex.P11 Appointment Order and Salary Receipt in support of his case. Perusal of Ex.P11 shows that he was working in Appollo Tyres and was earning Rs.22,000/- per month. P.W.2 Dr.S.Elangovan deposed that the claimant has sustained injuries on his right side face and lost three wisdom teeth and there was an injury on the Maxilla bone and also burn injury in the leg. Ex.P12 Disability Certificate shows that the claimant has suffered 37% of permanent disability. Ex.P13 is the X-ray.

7.The tribunal, on the basis of the above evidence, fixed the monthly income at Rs.19,575/- and by applying multiplier '18', awarded Rs.15,64,434/- towards loss of income; Rs.7,82,416/- towards loss of future prospects; Rs.50,000/- towards pain and suffering; Rs.15,000/- towards nutrition; Rs.10,000/- towards transportation; Rs.2,000/- towards damage to clothes; Rs.50,000/- towards loss of amenities and Rs.42,090/- towards Medical Bills. In total, the Tribunal awarded a sum of Rs.25,15,940/- along with interest at the rate of 7.5% per annum.

8.Heard Mr.S.Srinivasa Raghavan, learned counsel appearing for the appellant and Mr.N.C.Ashok Kumar, learned counsel appearing for the first respondent and perused the entire materials on record.

9.From the perusal of the records, it is seen that the claimant was 25 years at the time of accident and he had sustained 37% permanent disability. According to the learned counsel for the appellant, even as per the evidence of P.W.1, after the accident he was continuing in his employment and therefore, there is no loss of earning capacity. So, the multiplier applied by the tribunal has to be set aside. The learned counsel for the appellant fairly submitted that the award on the other heads are reasonable.



10.The learned counsel for the first respondent/claimant contended that the evidence of the Doctor would prove that the injured has sustained permanent disability and also there is a disfigurement, so, certainly the promotional aspect of the claimant is seriously affected. Considering these aspects, the Tribunal has rightly adopted multiplier method, which does not warrant interference.

11.In the instant case, admittedly, the claimant has not lost his employment due to the injuries sustained in the accident and on the other hand, in the claim petition as well as in his evidence PW1 admitted that even after the accident, he is still working in the same post. But the only grievance of the claimant is that due to the disfigurement, he faces some difficulties in getting promotion and other incentives. Since, it is not a case of loss of employment and loss of earning capacity, in our considered view, the tribunal ought not to have adopted multiplier method.

12.In the case of **P.Elangovan vs. S.Murali and two others (2017 (1) TN MAC 251)**, this court has held that the claimant would be entitled for Rs.3,000/- per Percentage of disability. Applying the same principle, this court awards Rs.1,11,000/- for 37% permanent disability. Taking note of the above facts, the award of Rs.7,82,482/- by the tribunal for loss of future earning capacity is set aside and awards Rs.3,00,000/- towards loss of promotional avenues. In all other respects, the award of the Tribunal is confirmed. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For loss of income	15,64,434	1,11,000	reduced
2.	For Loss of future prospects	7,82,416	Nil	deleted
3.	For Loss of pain and suffering	50,000	50,000	confirmed
4.	Extra nourishment	15,000	15,000	confirmed
5.	Loss of transportation	10,000	10,000	confirmed

6.	Loss of clothes	2,000	2,000	confirmed
7.	Loss of amenities	50,000	50,000	confirmed
8.	For medical expenses	42,090	42,090	confirmed
9.	Loss of promotional avenues	-	Rs.3,00,000	
	Total	Rs.25,15,940/-	Rs.5,80,090/-	

13.In the result, the appeal is partly allowed. The award is modified to **Rs.5,80,090/-**, rounded off to Rs.5,80,000/- as against Rs.25,15,940/-. The interest at the rate of 7.5% is maintained. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar

To

The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
(III Additional Sub Court),
Trichy.

Copy To:-

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V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.SRINIVASA RAGHAVAN, ADVOCATE IN SR No. 85947
+ 1 CC TO Mr.N.C.ASHOK KUMAR, ADVOCATE IN SR No. 85762

AM

TE/JC/SAR-3 : 13/03/2018 : 4P/6C

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