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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2312 & 2313 of 2010

in

M.P.Nos.1 & 1 of 2010

The Branch Manager,
The New India Assurance Co. Ltd.,
Annaporna Building, Ooty Main Road,
Mettupalayam.

..Appellant in both Appeals/
2nd respondent

..Vs..

1.V.Krishnan

.. 1st respondent in C.M.A.No.2312/2010/
Petitioner

1.K.Lakshmi

.. 1st respondent in C.M.A.No.2313/2010/
1st Respondent

2.M.Arulkumar

.. 2nd respondent in both Appeals/
1st Respondent

Prayers: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in MACT O.P.Nos.764 & 770 of 2006 on the file of the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.IV) Coimbatore at Tirupur dated 29.10.2007.

For Appellant in both Appeals : Mr.M.Krishnamoorthy

For Respondent 1 in both Appeals : Not ready in notice

Respondent 2 in both Appeals are set ex parte

J U D G M E N T

The instant appeals have been filed by the insurance company challenging the common Award dated 29.10.2007 passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court, Coimbatore at Tiruppur) in MCOP.Nos.764 and 770 of 2006.



The brief facts leading to the filing of the instant appeals are as follows:

2. The claimant in MCOP.No.764 of 2006 who is the first respondent in C.M.A.No.2312 of 2010 and the claimant in MCOP.No.770 of 2006 who is the first respondent in C.M.A.No.2313 of 2010 sustained injuries as a result of an accident that took place on 12.03.2006 caused by a car bearing registration No.TCC 202 owned by the second respondent in both the appeals and insured with the Appellant in both the Appeals. Both the claimants have preferred separate claims before the Motor Accident Claims Tribunal in MCOP.Nos.764 & 770 of 2006. The first respondent in C.M.A.No.2312 of 2010 sought for a compensation of Rs.15,52,000/- which was restricted to Rs.9,00,000/- and the first respondent in C.M.A.No.2313 of 2010 sought for a compensation of Rs.15,52,000/- which was restricted to Rs.9,00,000/- before the Tribunal. The Motor Accident Claims Tribunal by its common Award dated 29.10.2007 directed the Appellant to pay the first respondent in C.M.A.No.2312 of 2010 a sum of Rs.2,75,400/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and also directed the Appellant to pay the first respondent in C.M.A.No.2313 of 2010 a sum of Rs.1,11,800/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

3. Aggrieved by the common Award dated 29.10.2007 passed in MCOP.Nos.764 & 770 of 2006, the instant appeals have been filed by the insurance company.

4. Heard Mr.M.Krishnamoorthy, learned counsel for the appellant in both Appeals. Despite service of notice on the first respondent in both the Appeals and their names having been printed in the causelist today, there is no representation on their side. The second respondent in both the Appeals has remained ex parte both before the Tribunal as well as before this Court.

5. According to the learned counsel for the appellant in both the Appeals, the first respondent in both the Appeals were agriculturist. The first respondent in C.M.A.No.2312 of 2010 was aged 50 years and the first respondent in C.M.A.No.2313 of 2010 was aged 42 years, at the time of the Accident. According to the learned counsel for the Appellant in both Appeals, the Tribunal has erroneously adopted multiplier method without verifying the fact that as to whether the respective claimants had suffered any loss of earning capacity. According to the learned counsel for the Appellant in both the Appeals, the compensation awarded to the respective claimants under the impugned Award is excessive.

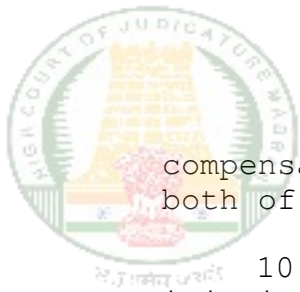


6. This Court has examined the impugned Award as well as the materials available on record.

7. The first respondent in C.M.A.No.2312 of 2010 was an agriculturist aged 50 years, at the time of the accident and due to the accident, he had sustained fracture of right femur (thigh bone). PW3, the Doctor has assessed the disability of the first respondent in C.M.A.No.2312 of 2010 as 56%, whereas the Tribunal has assessed the disability at 40%. It is evident from Ex.A5, Discharge Summary that the first respondent in C.M.A.No.2312 of 2010 was also hospitalised as inpatient between 12.03.2006 and 26.03.2006. Considering all these factors, the Tribunal has awarded a sum of Rs.1,58,400/- by applying the multiplier method towards loss of earning power to the first respondent in C.M.A.No.2312 of 2010. The first respondent in C.M.A.No.2312 of 2010 has also produced the medical bills before the Tribunal which was marked as Ex.A7. Considering Ex.A7, medical bills, the Tribunal has awarded a sum of Rs.91,000/- towards medical expenses to the first respondent in C.M.A.No.2312 of 2010. The Tribunal has also awarded Rs.15,000/- towards pain and suffering, Rs.3,000/- towards Extra nourishment charges, Rs.2,000/- towards transportation charges and Rs.6,000/- towards loss of income and in all put together a sum of Rs.2,75,400/- was awarded as compensation under its common Award to the first respondent in C.M.A.No.2312 of 2010.

8. Insofar as the first respondent in C.M.A.No.2313 of 2010, she was also an agriculturist aged 42 years, at the time of the accident and due to the accident, she had sustained fracture of pubic rami. PW3, the Doctor has assessed the disability of the first respondent in C.M.A.No.2313 of 2010 as 25.6%, whereas the Tribunal has assessed the disability at 20%. Considering all these factors, the Tribunal has awarded a sum of Rs.86,400/- by applying the multiplier method towards loss of earning power to the first respondent in C.M.A.No.2313 of 2010. The first respondent in C.M.A.No.2313 of 2010 has also produced the medical bills before the Tribunal which was marked as Ex.A15. Considering Ex.A15, Medical bills, the Tribunal has awarded a sum of Rs.10,400/- towards medical expenses to the first respondent in C.M.A.No.2313 of 2010. The Tribunal has also awarded Rs.10,000/- towards Pain and suffering, Rs.2,000/- towards Extra nourishment charges and Rs.3,000/- towards loss of income and in all put together a sum of Rs.1,11,800/- was awarded as compensation under its common Award to the first respondent in C.M.A.No.2313 of 2010.

9. The accident happened in the year 2006. Even though the respective claimants had made a much higher claim before the Tribunal and had also disclosed a higher monthly income, the



compensation awarded by the Tribunal under the common Award for both of them is a just compensation.

10. Considering the age, avocation and the nature of injuries sustained by the respective claimants and also the year of the accident, this Court is of the considered view that the compensation awarded to the first respondent in both the appeals under various heads by the Tribunal is a just compensation.

11. In the light of the above observations, there is no merit in the instant appeal. Accordingly the Appeals are dismissed without costs. Consequently, connected miscellaneous petitions are closed.

12. It is brought to the notice of this Court that the amount awarded by the Tribunal has already been deposited by the Appellant in both the Appeals. Therefore, the first respondent in both the Appeals are permitted to withdraw the amount deposited by the Appellant by filing an appropriate application.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Additional District Judge,
Fast Track Court No.IV,
Coimbatore at Tirupur

Copy to: The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Mr. Krishnamoorthy, Advocate Sr.67029

C.M.A.Nos.2312 & 2313 of 2010

SSI(CO)
EU(26/11/2018)