

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1275 of 2018
and
C.M.P.No.10270 of 2018

M/s.Reliance General Insurance Co. Ltd.,
Plot No.2054, 2nd Avenue,
Anna Nagar, Chennai 600 040.

... Appellant /2nd Respondent

Vs

1.P.Manikandan ... Respondent/Petitioner

2.M.Radhakrishnan ... Respondents/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 29.04.2017 made in M.C.O.P.No.103 of 2013 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.Balaji Prasad

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company, against the award of Rs.8,18,000/- granted as compensation for the disability sustained by the 1st respondent/claimant, due to the injuries sustained by him in the accident, which occurred on 03.09.2012, when the injured claimant was riding his motorcycle along with one V.Divya, which was hit down by a tipper lorry belonging to the 2nd respondent and insured with the appellant/insurance company.

2.Heard Mr.S.Arunkumar, learned counsel appearing for the appellant and Mr.Balaji Prasad, learned counsel appearing for the 1st respondent/claimant.

3. After the accident the claimant was admitted in Government Hospital, Chenglepet on the same day and subsequently shifted to Sri Ramachandra Medical Centre, Porur and treated for fracture in the left clavicle and amputation of left ring and middle finger of the left hand. Further there was mandible fracture and loss of one tooth. On 07.09.2012, surgery was done viz., ORIF for the fracture of mandible and he was discharged on 17.09.2012. Subsequently, the claimant took treatment as an out patient from 20.09.2012 to 08.10.2012. PW3-Doctor was examined. The evidence of PW3 shows that the fracture got malunited and there is loss of one tooth and the claimant is having rearranged occlusion due to left TM Joint Fibrosis, Midline shift to RT side, restricted side to side movement. Patient is having difficulty in opening and closing of the mouth, rearranged occlusion causing masticatory dysfunction. The Tribunal based on guideline issued by AIIMS 1981 guideline and gazette notification 1986 fixed the disability for loss of tooth and fracture in the mandible at 35%. PW4-Orthopaedic surgeon gave evidence that because of fracture of left clavicle, amputation of left mid and ring fingers and left, plating for clavicle and open reduction and int. fixation for mandible was done. Due to the above there is stiffness and the left shoulder movement is restricted. Due to the loss of mid and ring fingers of left hand there is difficulty in lifting or holding objects by left hand and therefore, he assessed the disability as 54% as partial and permanent disability as per Ex.P.24. Taking into consideration, Ex.P.22 disability certificate issued by PW3 and Ex.P.24 disability certificate issued by PW4 and the evidence adduced by them and based on the judgment in Selvaraj Vs. S.Ramesh and National Insurance Company Ltd., reported in 2007 (2) TNMAC P 249, the Tribunal assessed the disability at 68%. However, for orthopedic functional disability 54% was fixed and for the disability due to fracture of mandible, 30% was fixed as functional disability. As per the judgment, total disability is fixed at 68%, after clubbing two disabilities that occasioned in different parts of the body, due to the subject accident. However, functional disability was taken rightly at 30%.

4. The age of the 1st respondent was rightly fixed at 23 years, as per Ex.P.18, driving licence.

5. Since the functional disability is 30% and also considering the nature of injuries, the Tribunal adopted multiplier method, which is also confirmed. For the age of 23 years, appropriate multiplier is '18' as the claimant was working as a worker in Quality Control Section in Wheels India Ltd., Chennai, earning Rs.8,000/- per month and produced Contract of Apprenticeship entered with employer dated 20.02.2011, which was marked as Ex.P.14 and bank statement was marked as Ex.P.17 to show that he was earning Rs.8,000/- per

month, further proved by Ex.P.16 certificate of experience. Taking into consideration that the claimant had underwent course in computer hardware and after that did a Vocational course as a Mechanic (Motor Vehicle) in National Council of Vocational Training (NCVT), Ministry of Labour and Employment, as proved by Ex.P.13-Qualification certificate, the Tribunal rightly fixed the monthly income at Rs.8,000/- per month. Since there is 30% functional disability, the loss of income would be at Rs.5,18,400/- (Rs.8,000/- x 12 x 18 x 30/100).

6.Loss of income during the period of treatment:

Since the claimant did not attend the work for three months a sum of Rs.24,000/- was awarded by the Tribunal towards loss of income during the period of treatment is confirmed.

7.Transportation, nutritious food and miscellaneous expenditure:

The Tribunal has awarded a sum of Rs.50,000/-, under the above head and the same is confirmed.

8.Medical expenses:

The Tribunal has awarded a sum of Rs.96,600/-, under the above head, the same is confirmed.

9.Attendant charges:

The Tribunal has awarded a sum of Rs.9,000/-, under the above head and the same is confirmed.

10.Pain and suffering:

The Tribunal has awarded a sum of Rs.50,000/-, under the above head and the same is confirmed.

11.Loss of marital prospects:

The Tribunal has awarded a sum of Rs.50,000/-, under the above head, the same is confirmed.

12.Loss of amenities:

The Tribunal has awarded a sum of Rs.20,000/-, under the above head, the same is confirmed.

Head	Amount (Rs.)
Loss of income	518400
Loss of income during the period of treatment	24000
Transportation, nutritious food and miscellaneous expenditure	50000
Medical expenses	96600
Attendant charges	9000
Pain and suffering	50000
Loss of marital prospects	50000
Loss of amenities	20000
Total	818000

13.Hence, the Tribunal's compensation award of Rs.8,18,000/- is confirmed.

14.The interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed. The direction given by the Tribunal with regard to pay and recovery is confirmed.

15.The Insurance company is directed to deposit the award amount as per the award passed by the Tribunal, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the bank account of the claimant within a period of one week thereon.

16.Accordingly, this appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

sai

To

The II Judge,
(Motor Accident Claims Tribunal)
Court of Small Causes,
Chennai.

Copy TO

The Section Officer,
VR Section, High Court,
Madras 104.

+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No. 38151

C.M.A.No.1275 of 2018

GN(07/09/2018)