

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2247 of 2011

and

M.P.No.1 of 2011

1.M/s.ICICI Lombard General
Insurance Company Limited.

2.M/s.ICICI Lombard General
Insurance Company Ltd.,
44/3, II Floor, Gowely
Brown Road, R.S.Puram,
Coimbatore - 641 002.

... Appellants/
Respondents 2 & 4

..Vs..

1.Madhu
2.P.Ravikumar
3.T.Chinnasamy
(Respondents 2 & 3 are
set exparte in Lower Court)

...Respondents/Petitioners
Respondents 1 & 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 30.12.2010 in M.C.O.P.No.167 of 2008 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Dharmapuri.

For Appellants : Mrs.R.Sree Vidhya

For Respondents: Mr.S.Sathia Seelan for R1
R2 and R3 - Exparte.

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JUDGMENT

The appellants are the second and fourth respondents in M.C.O.P.No.167 of 2008 on the file of the Chief Judicial Magistrate, Dharmapuri. They have filed the present appeal questioning the quantum of the compensation amount awarded by the tribunal vide its order dated 30.12.2010. The first respondent/claimant filed a claim petition under Section 166 of

the Motor Vehicles Act, 1988 in M.C.O.P.No.167 of 2008 seeking compensation of Rs.14,41,000/- for the injuries sustained by him in a road accident that took place on 12.10.2007.

2.The brief facts of the case of the first respondent/claimant is as follows:

On 12.10.2007 at about 11.30 a.m., the first respondent/claimant along with his relatives was travelling in a Tata Ace Vehicle bearing Registration No. TN 29 AB 2452 on Velichandai - Ardhahalli main road. When, he was nearing Dhandukaranahalli Maran Karumbu Thottam another Tata Ace Mini Lorry bearing Registration No. TN 24 B 6415 belonging to the fourth respondent hit the Tata Ace Vehicle bearing Registration No. TN 29 AB 2452, as a result of which, the first respondent/claimant as well as the others who were travelling in the said vehicle sustained grievous injuries.

3.The owner of the Tata Ace Vehicles bearing Registration Nos. TN 29 AB 2452 and TN 24 B 6415 remained absent before the tribunal and therefore they were set ex-parte.

4.The present appellants filed their respective counters and contested the claim petition. After analysing the evidence on record, the tribunal awarded compensation of Rs.2,44,000/- together with interest at the rate of 7.5% p.a to the first respondent/claimant and directed the first appellant and the owner of the vehicle bearing Registration No. TN 24 B 6415 to pay the compensation to him jointly and severally. The petitions as against the third respondent and second appellant were dismissed.

5.Aggrrieved over the quantum of compensation awarded by the tribunal, the appellants ICICI Lombard General Insurance Company Limited has filed the present appeal.

6.Mrs.R.Sree Vidhya, learned counsel appearing for the appellants would contend that the tribunal without any Medical records have awarded an exorbitant amount of Rs.2,44,000/- to the first respondent/claimant and that the same has got to be reduced.

7.Per Contra, Mr.S.Sathia Seelan, learned counsel appearing for the first respondent/claimant would contend that the first respondent/claimant sustained a fracture on his fore arm and fracture of right hand lower head and that he was hospitalized continuously for a period of 71 days.

8.It is pertinent to point out that the first respondent/claimant did not file any discharge summary to show

that he was continuously hospitalised for a period of 71 days. The learned Chief Judicial Magistrate, Dharmapuri, Motor Accidents Claims Tribunal without any iota of evidence had come to a conclusion that an operation was performed on the lower head of ulna.

9.The learned counsel appearing for the first respondent/claimant relied on the decision in Ramachandrappa -vs- Manager, Royal Sundaram Alliance Insurance Company Limited reported in (2011) 13 Supreme Court Cases 236 and contended that since the first respondent/claimant has suffered physical disability of 50% on his right upper limb, he is unable to work as a labourer and therefore multiplier method has to be adopted. In the decision cited by the learned counsel appearing for the first respondent/claimant, the injured had sustained a serious injury and his right hand was completely disabled. As far as the instant case is concerned, even as per the Accident Register (Ex.P2) and the opinion of the doctor, the first respondent/claimant has sustained only a fracture on his fore arm and right hand lower head and there is nothing to suggest that the first respondent/claimant has suffered a functional disability. He might only experience some difficulty in doing his work on account of the accident.

10.In the decision in Nagarajappa -vs- Divisional Manager, Oriental Insurance Company Limited reported in (2011) 13 Supreme Court Cases 323 relied upon by the learned counsel appearing for the first respondent/claimant it has been held thus:

10... while awarding compensation it has to be kept in mind that the appellants is to do manual work for the rest of his life without full use of his left hand, and this is bound to affect the quality of his work and also his ability to find work..."

In the above decision, the road accident had left the injured with one hand useless and in such circumstances it was observed by the Hon'ble Supreme Court that while calculating loss of future income, multiplier method should be adopted. Therefore the said ruling also would be not applicable to the facts of the present case.

11.In the decision in The Branch Manager, National Insurance Company Limited, T.S.No.4132 East Main Street, Pudukkottai District -vs- Minor Afrin Nija and others in C.M.A.(MD)No.144 of 2013, relied on by the learned counsel for the first respondent/claimant, the injured was aged 2 ½ years old and she lost her two toes and her entire left foot also got damaged. Apart from that, skin grafting was also done on the 2 ½ years old child. Considering those aspects, the tribunal awarded a

compensation of Rs.5,20,000/- to her. As far as the decision in The Managing Director, Tamil Nadu State Transport Corporation Ltd., Villupuram Division I, Villupuram 605 602 -vs- Edwin Lionel and another in C.M.A.Nos.2911 and 2912 of 2004 is concerned the injured were hospitalized in Government Royapettah Hospital for more than ten times and they sustained very serious injuries. One of injured was a minor studying 8th standard and there was a fracture of right scapula and right immuno thorax. It was also found that the lungs of the injured was pierced due to the fracture of the rib bones. In such circumstances, this Court held that the percentage of disability should not have been reduced. Therefore, the above said decisions would not be applicable to the facts of the present case.

12. As far as the instant case is concerned, as already observed, there is absolutely no medical records to show that the first respondent/claimant was hospitalized continuously for 71 days and that the operation was performed on him. Apart from awarding partial permanent disability, a sum of Rs.1,00,000/- is awarded additionally towards future loss of income. The award passed by the Tribunal under various heads is extracted hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Partial Permanent Disability	70,000/-
2.	Loss of Income	18,000/-
3.	Pain and sufferings	25,000/-
4.	Extra Nourishment	3,000/-
5.	Transportation Charges	3,000/-
6.	Mental Agony	25,000/-
7.	Future Prospects	1,00,000/-
Total Compensation		Rs.2,44,000/-

13. In the considered opinion of this Court, since the appellant was not hospitalized, a sum of Rs.50,000/- awarded by the tribunal towards pain and sufferings and mental agony is highly exorbitant. Considering the nature of injuries sustained by the first respondent/claimant, the partial permanent disability taken up as 35% though by the tribunal Dr. Krishnakumar (P.W.2) has assessed the partial permanent disability as 50%.

14. A perusal of the disability certificate (Ex.P7) clearly shows that while assessing the partial permanent disability Dr. Krishnakumar (P.W.2) has considered only a copy of the Accident Register, wound certificate and X-Ray. The tribunal has also

fixed the partial permanent disability as 35% and awarded a sum of Rs.70,000/-, which in the opinion of this Court need not be disturbed. The first respondent/claimant is entitled to a sum of Rs.9000/- towards loss of income, Rs.3000/- towards Transportation Charges, Rs.3000/- towards Extra Nourishment and Rs.15,000/- towards pain and sufferings and mental agony. Thus, the first respondent/claimant is entitled to a sum of Rs.1,00,000/- which shall carry interest at the rate of 7.5% p.a from the date of the claim petition till the date of deposit.

15.The award of Rs.2,44,000/- passed by the tribunal is not commensurate with the nature of injuries suffered by the first respondent/claimant and the manner in which the tribunal has decided upon the quantum of compensation suffers from logical reasoning in the instant case. Therefore, this Court totally disapproves the decision of the tribunal and deprecates such practice. In view of all these reasons stated by me, the award passed by the tribunal is reduced to Rs.1,00,000/- from Rs.2,44,000/-.

16.In the result,

(i) The appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

(ii) The compensation amount is reduced to Rs.1,00,000/- from Rs.2,44,000/-. Since is represented that the entire award amount together with interest passed in M.C.O.P.No.167 of 2008 on the file of Motor Accidents Claims Tribunal (Chief Judicial Magistrate) at Dharmapuri is deposited by the first appellant Insurance Company and 50% of the same is also withdrawn by the first respondent/claimant. The first appellant Insurance company is directed to withdraw the excess compensation amount. They are also at liberty to recover the amount from the claimant, the excess amount withdrawn by him over and above the award passed by this Court.

rna

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Dharmapuri.

2. The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to M/s.S.R.Sreevidhya , Advocate, S.R.No.88479

+1cc to Mr.S.Sathiaseelan, Advocate, S.R.No.87869

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Kak (23/04/2019)



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