

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.08.2018	Delivered on 26.09.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.Nos.1575 & 1576 of 2016
& CMP Nos.11909 & 11910 of 2016
and Cross Objection No.54 of 2016

Shriram General Insurance Co. Ltd.,
II Floor, No.66 Thirumalai Pillai Road,
T.Nagar, Chennai 600 017... Appellant in CMA Nos.1575 & 1576/16
& 1st Respondent in Cross Obj 54/16/
2nd Respondent in M.C.O.P. 3006 & 3007/12
-vs-

1. Manikandan ... 1st Respondent in CMA No.1575/16
& Appellant in Cross Obj
54/16/Claimant in M.C.O.P. 3006/2012.

2. Srinivasan ... 2nd Respondent in both the
Appeals/1st Respondent in M.C.O.P. 3006
& 3007/2012.

Manivasagan ... 1st Respondent in CMA No.1576/16/
Claimant in M.C.O.P. 3007/2012.

Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988 against the judgment and decree in
MCOP.No.3006 & 3007 of 2012 dated 27.07.2015 on the file of the
Motor Accident Claims Tribunal, (VI Court of Small Causes)
Chennai.

Cross Objection filed under Order 41 Rule 22 of Civil Procedure
Code in C.M.A. 1575/2016 , to enhance the compensation amount
awarded in the Judgment and decree dated 27.07.2015 passed in
MCOP No.3006 of 2012 on the file of the Motor Accident Claims
Tribunal, (VI Court of Small Causes) Chennai.

For Appellant : Mr.S.Dhakshnamoorthy
Appellant in CMA Nos.1575 & 1576/16
& 1st Respondent in Cross Obj 54/16

For Respondents : Mr.F.Terry Chella Raja
1st Respondent in CMA Nos.1575 & 1576/16
& Appellant in Cross Obj 54/16

R2 - Not Ready

J U D G M E N T

R.SUBRAMANIAN, J.

These appeals are at the instance of the Insurance Company which suffered an award for payment of Rs.13,31,800/- for the injuries caused to one Manikandan in MCOP No.3006 of 2012 and a sum of Rs.89,000/- for the injuries caused to one Manivasagan in MCOP No.3007 of 2012.

2. The two Claim Petitions came to be filed by the claimants seeking compensation of Rs.6,00,000/- for the injuries suffered by the claimant in MCOP No.3006 of 2012, Manikandan and a sum of Rs.1,00,000/- for the injuries suffered by the claimant in MCOP No.3007 of 2012, Manivasagan. According to them, when both the claimants were travelling in the Motor Cycle bearing Registration No.TN-19-D-1982 being driven by the claimant in MCOP No.3007 of 2012 Manivasagan with the claimant in MCOP No.3006 of 2012 Manikandan as a pillion rider from Tambaram to Koyambedu. The Eicher Van bearing Registration No.TN04-R-8661, owned by the 1st respondent and insured with the second respondent/appellant insurance Company, driven by its driver in a rash and negligent manner, came from behind and hit against the Motor Cycle. As a result of the accident, the pillion rider Manikandan suffered grievous injuries, namely head injury, a fracture in the right leg and multiple injuries all over the body. It is also claimed that the claimant in MCOP No.3007 of 2012 viz. Manivasagan had suffered head injury, injuries of the right eye, face and right ankle, apart from multiple contusion all over the body.

3. The claims were resisted by the Insurance Company contending that the accident took place due to the rash and negligent driving of the two wheeler by Manivasagan. While admitting the Insurance, the treatment period as well as the disability claimed by the claimants were denied.

4. The claims Tribunal which heard both the OP's concluded that the accident was caused due to the rash and negligent driving on the part of the driver of the Eicher Van. To come to the said conclusion, the Tribunal relied upon the FIR as well as the rough sketch. The Tribunal also found that the evidence of the injured claimants was not controverted by the Insurance Company by examining the Driver of the Van. The Tribunal, therefore, concluded that the 2nd respondent Insurance Company is liable to pay the compensation.

5. On the quantum, the Tribunal found that insofar as the claimant in MCOP No.3006 of 2012 is concerned, he has suffered fracture in the right femur bone and there has been a malunion which had led to a permanent disability. The Tribunal on the basis of the discharge summary arrived at the functional disability at 40%. The Tribunal also found that due to the malunion of the femur bone there was shortening of the limb, namely the right leg by 1½ inches. The right knee joint flexion and extension was reduced by 40 degrees, according to the Tribunal, in view of the injury caused to the knee joint. The Tribunal also found that there was post traumatic joints stiffness in the right knee and right hip joint.

6. On the above findings, the Tribunal concluded that the functional disability is 40%. Insofar as the injured Manivasagan, namely the claimant in MCOP No.3007 of 2012 is concerned, the Tribunal found that the permanent disability caused to him would be at 15%. Inasmuch as the injuries were not very serious, the Tribunal found there was no functional disability and therefore granted a sum of Rs.45,000/- towards partial permanent disability for the 15% disability assessed at Rs.3,000/- per percentage. Since both the injured claimed that they were carpenters and in the absence of any documentary evidence, the Tribunal took their income at Rs.9,000/- per month. Towards loss of income during the treatment period, the Tribunal granted a sum of Rs.27,000/- for a period of 3 months for the 1st respondent in CMA No.1575 of 2016 and a sum of Rs.9,000/- for a period of one month for the 1st respondent in CMA No.1576 of 2016. While calculating the loss of future earning capacity for the 1st respondent in CMA No.1575 of 2016, namely Manikandan, the Tribunal took the loss of earning capacity at Rs.9,000/- added 50% towards future prospects applied a multiplier of 18 and concluded that the future loss of earning capacity will be Rs.11,66,400/-. The Tribunal added a sum of Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards attender charges and Rs.5,000/- towards damage to clothing. Insofar as the claimant in MCOP No.3007 of 2012, Manivasagan is concerned, the Tribunal granted a sum of Rs.2,500/- each towards transportation, extra nourishment, attender charges and damage to clothing. The Tribunal granted a sum of Rs.10,000/- for non-pecuniary damages namely pain and suffering. In all, the Tribunal granted a sum of Rs.13,31,800/- as compensation for the claimant in MCOP No.3006 of 2012 and Rs.89,000/- as compensation for the claimant in MCOP No.3007 of 2012. Aggrieved the Insurance Company is on appeal.

7. The 1st respondent in CMA 1575 of 2016, namely Manikandan has filed Cross Objection in Cross Objection No.54 of 2016 seeking enhancement.

8. We have heard Mr.S.Dhakshnamoorthy, learned counsel appearing for the appellant Insurance Company in CMA Nos.1575 & 1576 of 2016 and the 1st respondent in the Cross objection 54 of 2016. Mr.F.Terry Chellaraja, learned counsel appearing for the 1st respondent in CMA Nos.1575 & 1576 of 2016 and Cross objector in Cross Objection No.54 of 2016.

9. Mr.S.Dhakshnamoorthy, learned counsel appearing for the Insurance Company would submit that the Tribunal ought not have adopted a sum of Rs.9,000/- as a monthly income in the absence any documentary evidence to establish the income of the claimants. He would further contend that the Tribunal was not right in adopting 50% towards future prospects.

10. Per contra, Mr.F.Terry Chellaraja, learned counsel appearing for the claimants would contend that since the accident had occurred in the year 2012, the Tribunal should have taken the monthly income at Rs.15,000/- and according to him, the fixation of Rs.9,000/- as monthly income is on the lower side.

11. We have considered the rival submissions. We do not think that the fixation of income at Rs.9,000/- per month is on the higher side, at the same time, we also find the same reasonable considering the fact that both the claimants were working as carpenters at the relevant point of time. Though, we see some force in the contention of Mr.F.Terry Chellaraja, learned counsel appearing for the 1st respondent in the appeals that the Tribunal should have fixed at Rs.15,000/- per month. We are unable to countenance his claim in the absence of any documentary evidence. The claimants have not produced any document to show that they were actually working as carpenters.

12. We are therefore of the opinion that the monthly income taken at Rs.9,000/- is just and reasonable. The Tribunal has added 50% towards future prospects which is not in tune with the judgment of the Larger Bench of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and other, reported in 2018 (1) LW 331. The larger Bench of the Hon'ble Supreme Court in the above judgment has made it clear that in case of self-employed persons, who are aged below 40, the future

prospects will be taken only at 40% not at 50%. Thus calculated the monthly income of the claimants would be Rs.12,600/-. The Tribunal has assessed the functional disability at 40% and we see no reason to defer from the conclusion of the Tribunal on the quantum of the disability assessed by it. Thus calculated, the loss of future earning capacity for the 1st respondent in CMA No.1575 of 2016 would be as follows:

$$\text{Rs.9,000/-} + \text{Rs.3,600} = \text{Rs.12,600/-} \times 12 \times 18 \times 40\% = \text{Rs.10,88,640/-}$$

13. The award of the Tribunal on the other heads does not call for any interference at our hands as we find the same just and reasonable. Therefore, the award in MCOP No. 3006 of 2016 needs modification and the same is modified as follows:

S.No.	Heads	Amount
1.	Towards Medical expenses	Rs. 98,400/-
2.	Loss of Income for 3 months	Rs. 27,000/-
3.	Transportation	Rs. 5,000/-
4.	Extra Nourishment	Rs. 5,000/-
5.	Attender Charges	Rs. 5,000/-
6.	Damage to clothes	Rs. 5,000/-
7.	Loss of Future Earning Capacity [9,000/- + Rs.3,600] x 12 x 18 x 40%	Rs.10,88,640/-
8.	Pain & Sufferings	Rs. 10,000/-
9.	Loss of Amenities	Rs. 10,000/-
	TOTAL	Rs.12,54,040/-

and the same is rounded off to Rs.12,54,000/-. The award will carry interest at 7.5% per annum from the date of petition till date of payment.

14. The award in MCOP No. 3007 of 2012 is confirmed. In fine CMA No.1575 of 2016 is allowed in part, granting a sum of Rs.12,54,000/- with 7.5% interest as compensation to the 1st respondent and the Cross objection in Cross Objection No.54 of 2016 is dismissed. CMA No.1576 of 2016 is dismissed, confirming the award of the Tribunal. However, we make no order as to costs. Consequently, the connected miscellaneous petitions are closed.

15. The Insurance Company is directed to deposit the award amount as per the modified award in CMA No.1575 of 2016 and a sum of Rs.89,000/- as awarded in CMA No.1576 of 2016 before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, on such deposit the claimants will be permitted to withdraw the same.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

jv

To

The Vi Judge, Court of Small Causes
Motor Accident Claims Tribunal,
Chennai.

+2 Ccs to Ms.M. Malar, Advocate sr 66740 & 66741.

+2 Ccs to Mr.S. Dhakshinamoorthy, Advocate sr 67020 & 67021.

CMA.Nos.1575 & 1576 of 2016
& CMP Nos.11909 & 11910 of 2016
and Cross Objection No.54 of 2016

KGK (CO)
SP(14/11/2018)

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