

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1642 of 2016
and C.M.P.No.12535 of 2016

M/s.Oriental Insurance Co. Ltd.,
No.20, Gandhi Road,
Kallakurichi,
Villupuram District.

...Appellant/Respondent-II

Vs.

1.Gunasekaran

R1/Petitioner

2.Annapurani

R2/Respondent

(R2 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 01.09.2015 made in M.C.O.P.No.870 of 2006 on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.J.Chandran

For R1 : Mr.F.Terry Chella Raja
for M/s.M.Malar

For R2 : Person not found

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 01.09.2015 made in M.C.O.P.No.870 of 2006 on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.870 of 2006 on the file of the VI Small Causes Court, (Motor Accident Claims Tribunal), Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.2,00,000/- as compensation

for the injuries sustained by him in the accident that took place on 02.10.2005.

3.The Tribunal considering the pleadings, oral and documentary evidence concluded that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the 2nd respondent and held that both the appellant as well as the 2nd respondent are liable to pay the compensation jointly and severally to the 1st respondent. The Tribunal awarded a sum of Rs.5,23,000/- as compensation to the 1st respondent and directed the appellant as the insurer of the vehicle belonging to the 2nd respondent, to pay the same on behalf of the 2nd respondent.

4.Challenging the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that 1st respondent has claimed only a sum of Rs.2,00,000/- as compensation, while the Tribunal has awarded a sum of Rs.5,23,000/-, on erroneous grounds. The Tribunal has erred in awarding compensation for loss of future earning capacity, by adopting multiplier method, when the 1st respondent has not suffered any functional disability or totally immobilized. The learned counsel for the appellant further contended that the Tribunal ought to have disbelieved the evidence of Doctor as P.W.2 with regard to disability, in the absence of any evidence for continuous medical treatment records till assessment of disability, discharge certificate, old X-rays, prescriptions and bills. The Tribunal mechanically granted excessive compensation. The Presiding Officer of the Tribunal in the present case is in the habit of awarding excessive compensation and passes award by cut and paste method and prayed for setting aside the award.

6.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent is an agriculturist. He suffered totally 55% disability as assessed by the Doctor, P.W.2. Due to the said disability, he is unable to do work as he was doing earlier. The Tribunal considering the nature of injuries and disability certified by P.W.2 Doctor, has rightly adopted multiplier method for assessing loss of future earning capacity. The Tribunal has considered elaborately the judgment of this Court and the Hon'ble Apex Court and has given valid reason for applying the multiplier method. The Tribunal has awarded just compensation and has power to grant compensation even more than what is claimed by the victim and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused all the materials available on record.

8. From the materials on record, it is seen that the 1st respondent has suffered two fractures, one in the left hip and another in the ankle. He has taken treatment as in patient from 02.10.2005 to 07.10.2005 in Government Headquarters Hospital, Villupuram and from 07.10.2005 to 23.10.2005 at Indira Gandhi Government General Hospital and Post Graduate Institute, Puducherry. The Doctor has certified 30% disability with regard to injuries in hip and 25% disability for the fracture in the ankle. There is no evidence on record to show that due to the injuries suffered in the accident, the 1st respondent sustained any functional disability and he is unable to do work as he was doing earlier. The Hon'ble Apex Court and the Division Bench of this Court in various judgments have held that only when the injured person suffers functional disability, due to which he is unable to do work as he was doing earlier, the Courts can award compensation by adopting multiplier method, instead of granting compensation on percentage basis. The Court must appreciate the evidence let in by the parties to decide whether to adopt multiplier method or to grant compensation on percentage basis. In the present case, the Tribunal on presumption and assumption, for socio economic reason, has fixed 25% loss of earning capacity on erroneous reasons and applied multiplier method. As there is no evidence to show that the 1st respondent has suffered loss of earning capacity, the multiplier method adopted by the Tribunal is liable to be set aside and is hereby set aside. The Doctor has certified disability of 1st respondent at 55% and the accident took place in the year 2005. Hence, the 1st respondent is entitled to a sum of Rs.1,10,000/- as compensation for the permanent disability at the rate of Rs.2,000/- per percentage for 55% disability. The 1st respondent is not entitled to any amounts for loss of earning capacity. The Tribunal has awarded a sum of Rs.19,500/- for loss of income for three months during treatment period. Considering the nature of injuries, a sum of Rs.32,500/- is granted for five months at the rate of Rs.6,500/- per month towards loss of income. The compensation awarded by the Tribunal under all other heads are just compensation and are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	19,500	32,500	enhanced
2.	Loss of amenities	20,000	20,000	confirmed

3.	Loss of future earning capacity	4,38,750	-	Set aside
4.	Transportation	5,000	5,000	confirmed
5.	Extra nourishment	5,000	5,000	confirmed
6	Attender charges	5,000	5,000	confirmed
7	Damages to clothes	5,000	5,000	confirmed
8	Pain and suffering	20,000	20,000	confirmed
9	Medical expenses	5,000	5,000	confirmed
10	Permanent disability	-	1,10,000	granted
	Total	Rs.5,23,250/ restricted to Rs.5,23,000/-	2,07,500	Reduced by Rs.3,15,500/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,23,000/- is hereby reduced to Rs.2,07,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The appellant-Insurance Company is directed to deposit the modified award amount with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the modified award amount, along with interest and cost, less the amount if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the balance amount along with proportionate interest and cost, lying in the credit of M.C.O.P.No.870 of 2006, if any, by filing necessary application. No costs. Consequently, connected Miscellaneous Petition is closed.

gsa

Sd/-

Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To
The Judge,
VI Small Causes Court,
(Motor Accident Claims Tribunal), Chennai.

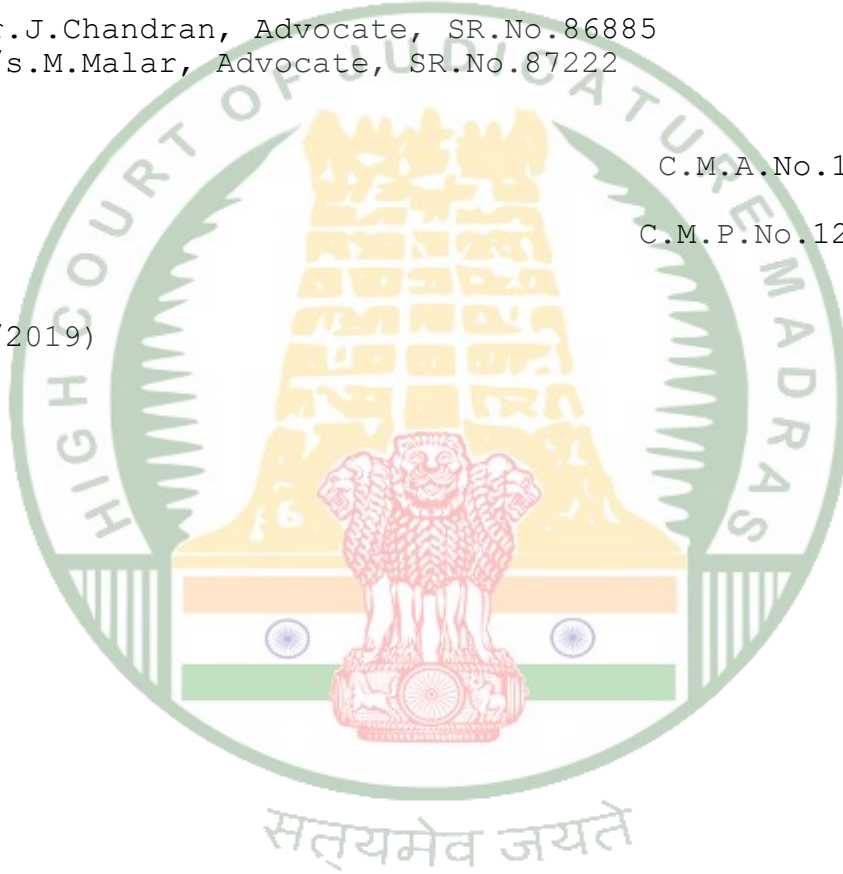
Copy to:-

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

+1cc to Mr.J.Chandran, Advocate, SR.No.86885
+1cc to M/s.M.Malar, Advocate, SR.No.87222

C.M.A.No.1642 of 2016
and
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RV (CO)
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