

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.588 of 2015
and M.P.No.1 of 2015

M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
Rep. by its Senior Vice President,
No.45-46, Whites Road,
Chennai -14.

.. Appellant/3rd Respondent

Vs.

1.G.Veeran
2.A.Gopi
3.A.S.Sharath Chandran

.. Respondents/Petitioner/ 1 & 2 Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree dated 11.12.2014 made in M.C.O.P. No.1013 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Mr.M.Krishna Moorthy

For R1 : Mr.T.Velumani

RR 2 & 3 : Given up

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the Insurance Company against the award dated 11.12.2014 made in M.C.O.P. No.1013 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

2.The appellant/Insurance Company is third respondent in M.C.O.P. No.1013 of 2010 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. The first respondent/claimant filed the above claim petition claiming a sum of Rs.16,76,500/- as compensation for the injuries sustained by him in the accident that took place on 21.06.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car/second respondent belonging to the third respondent herein and directed the appellant as insurer to pay a sum of Rs.7,54,400/- as compensation to the first respondent.

4.Against the said award dated 11.12.2014 made in M.C.O.P. No.1013 of 2010, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

5.The learned counsel appearing for the appellant contended that the Tribunal has erred in applying multiplier method, wherein there is no functional disability to the first respondent due to the injuries sustained by him in the accident. The notional income fixed by the Tribunal at Rs.7,000/- per month is excessive in the absence of any evidence to prove the income. P.W.2/Doctor has not clinically examined the first respondent and 30% disability fixed by the Tribunal is excessive. The first respondent was admitted in the hospital for ten days and for the injuries sustained by him as detailed by P.W.2/Doctor, the amounts awarded by the Tribunal under the different heads especially 'pain and suffering and loss of income' are excessive and prayed for reducing the award amount granted by the Tribunal.

6.Per contra, the learned counsel appearing for the first respondent contended that P.W.2/Doctor has certified that due to head injury sustained by the first respondent, movement of neck has been reduced, which would affect his work. The Tribunal considering this fact, has awarded compensation towards loss of income by applying multiplier method. Due to the injuries, the first respondent suffered much pain and the amount awarded by the Tribunal towards pain and suffering is not excessive and it is only meager amount and prayed for dismissal of the appeal.

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

8.The contention of the learned counsel appearing for the appellant is that the Tribunal erred in applying multiplier method for awarding compensation towards loss of earning power for the nature of injuries sustained by the first respondent and the first respondent is not entitled to compensation by applying multiplier method. The said contention has considerable force. A perusal of the award of the Tribunal shows that P.W.2/Doctor has deposed that due to the head injury, the movement of neck of the first respondent is reduced and it will affect the work of the first respondent. For the said reason, the Tribunal applied multiplier method and granted compensation. The reasoning of the Tribunal for applying multiplier method for granting compensation towards disability and loss of earning power is erroneous. The first respondent is working as a ticket collector in Toll Plaza and there is nothing on record to show that he could not do the work as he was doing earlier and that his earning capacity has been reduced. In such circumstances, the first respondent is entitled to compensation towards disability only based on the percentage method. P.W.2/Doctor has certified that the first respondent has suffered 35% disability and the Tribunal has reduced the same to 30%. Considering the evidence of P.W.2/Doctor as extracted in the award, the first respondent is entitled to compensation for 35% of disability. By awarding Rs.2,000/- per percentage of disability, a sum of Rs.70,000/- (2000 X 35) is arrived as compensation towards disability. The amount of Rs.4,28,400/- granted by the Tribunal towards disability and loss of earning power is hereby set aside. The amounts granted by the Tribunal under all the other heads are just compensation and hence, they 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 for five months	35,000	35,000	confirmed
2.	Transportation	15,000	15,000	confirmed
3.	Extra nourishment	15,000	15,000	confirmed
4.	Damage to clothes	1,000	1,000	confirmed

5.	Medical expenses	1,75,000	1,75,000	confirmed
6.	Attendant charges	10,000	10,000	confirmed
7.	Loss of amenities of life	25,000	25,000	confirmed
8.	Mental agony to the petitioner and pain and suffering	50,000	50,000	confirmed
9.	Disability and loss of earning power (Rs.7000 X 12 X 17 X 30%)	4,28,400	-	set aside
10.	Disability	-	70,000	awarded
	Total	7,54,400	3,96,000	Reduced by Rs.3,58,400/-

9. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.7,54,400/- awarded by the Tribunal is hereby reduced to Rs.3,96,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. 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 order. On such deposit, the claimant/first respondent is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.1013 of 2010, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

The II Judge,
Court of Small Causes,
Motor Accidents Claims Tribunal,
Chennai.

+1 CC to Mr.M.Krishnamoorthy, Advocate sr 84175.
+1 CC to Mr.T.Velumani, Advocate sr 84343.

C.M.A.No.588 of 2015
and M.P.No.1 of 2015

NM(CO)
SP(21/03/2019)