

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.2370 of 2015
and
M.P.No.1 of 2015

Reliance General Insurance Co. Ltd.,
Branch Office, 408, Perundurai Road,
Erode District. ...Appellant/2nd Respondent

Vs

1.T.Vignesh ...Respondent/Petitioner

2.Maheswaran ... Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award and decree dated 08.04.2015 made in M.C.O.P.No.1028 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.S.Arun Kumar

For Respondents: Mr.S.P.Yuvaraj (for R1)

J U D G M E N T

(The judgment of the Court was made by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company against the award of Rs.26,34,000/- to the claimant, who got injured in the accident occurred on 02.05.2014, leading to amputation of right leg below knee.

2.Heard Mr.S.Arun Kumar, learned counsel appearing for the appellant and Mr.S.P.Yuvaraj, learned counsel appearing for the claimant.

3.The only question to be decided is with regard to quantum and no liability issue is taken up by the insurance company.

4.Admittedly the 1st respondent/claimant was a first year B.E., (Information Technology) student. The 1st respondent was riding his Yamaha two wheeler. When the lorry insured with the appellant/insurance company turn right side, hit the 1st

respondent. In the said accident, the 1st respondent sustained the following injuries:

"1.Amputation of right leg below knee; 2.Severe fractures in right Maxilla; 3.Severe fractures in right mandible; 4.Severe fracture right hand wrist; 5.Fractures in both ulna and radius in right hand; 6.Loss and dislocations of teeth upper and lower jaw; 7.Multiple fractures in right scapula; 8.Fracture in right thumb, multiple abrasions, pain and sufferings all over the body"

Therefore, the claim petition.

5.The Tribunal based on the evidence of PW1/claimant and available documents (i.e.,) Ex.P.1-FIR, Ex.P.2 and Ex.P.3 Accident registers, rightly to come to the conclusion that the accident occurred because of the rash and negligent driving of the lorry. Moreover there was no rebuttal evidence on the side of the appellant. As already observed and as proved by Ex.P.13, the 1st respondent is a B.E. (IT) student and he was aged about 22 years at the time of the accident. The Tribunal considering the amputation of right leg below knee and based on the medical evidence (i.e.,) Ex.P.4, Ex.P.11, Ex.P.12(s), Ex.P.18, Ex.P.21 and Ex.P.22 and especially PW2 Doctor's evidence, determined the disability at 90%. Therefore, the determination of disability at 90% cannot be found fault with and the same is confirmed.

6.As far as income is concerned, the Tribunal determined the monthly income at Rs.7,500/-. Even in the absence of any proof regarding income, the Tribunal took into consideration the various judgments of this Court, as well as Supreme Court in M.D.Jacob ..Vs.. United India Insurance Co. Ltd., and another reported in 2014 ACJ 648 (SC), confirmed the fixation of Rs.5,000/- as monthly income for a victim, who sustained amputation of left hand and the said accident occurred on 27.07.1997. Whereas in this case, the accident occurred on 02.05.2014. Moreover, the 1st respondent is an Engineering student. In similar circumstances, the Division Bench of this Court in National Insurance Company Limited Vs. T.A.Nickolas and two others reported in 2009 (1) TNMAC 373, determined the monthly income of a B.E., student at Rs.7,500/-. However, considering the the above, the Tribunal is justified in determining the monthly income at Rs.7,500/- and loss of earning power at 75%. This Court confirms the loss of earning power at 75%, even though the disability is at 90%, as the victim subsequently completed the B.E., course.

7.As per the Sarala Verma & Others ...Vs... Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier is taken at "18" and Rs.11,34,000/- has been determined as loss of income. Therefore, the said amount is confirmed.

8.A perusal of the award would show that the Tribunal did not take into consideration the future prospects. Therefore, more amount has to be awarded towards future prospects. Taking into consideration that the Tribunal awarded interest for future medical expenses at Rs.1,00,000/-, this Court is not inclined to award any amount towards future prospects. As per Ex.P.11 and Ex.P.12(s) Rs.9,28,800/- was rightly awarded by the Tribunal towards medical expenses and the same is confirmed.

9.The Tribunal is justifying in awarding Rs.1,00,000/- towards loss of amenities and enjoyment of life as the 1st respondent is a bachelor. For loss of marital prospects, Rs.75,000/- has been awarded by the Tribunal, even though more amount has to be awarded as no young girl will come forward to marry a person, whose leg is amputated. However, considering the award of amount on the other headings, this Court is not inclined to enhance the same. The Tribunal has awarded following amounts and the same is also justified:

Head	Amount
Loss of expectation of life	50000
Expenses towards transportation	10000
Expenses towards extra nourishment	10000
Attender charges	25000
Permanent disability	100000
Future medical expenses	100000
Damages to cloths	1200
Total	296200

10.The total compensation of Rs.26,34,000/-, which was awarded by the Tribunal for a 1st year B.E., student, who sustained injuries in the accident and lost his right leg below knee, appears to be very less. In any event, taking into consideration the award of amount under various heads, this Court inclined to confirm the award as the 1st respondent completed his course. Therefore, the amount awarded by the Tribunal at Rs.26,34,000/- is confirmed and interest at the rate of 7.5 % per year is also unaltered.

11.Hence, appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

12.The Tribunal is directed to transfer the award amount after adjusting the amount already paid to the claimant, through RTGS, within a period of one week, from the date of receipt of a copy of this order.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Special Sub Court No.2, Salem.

Copy to

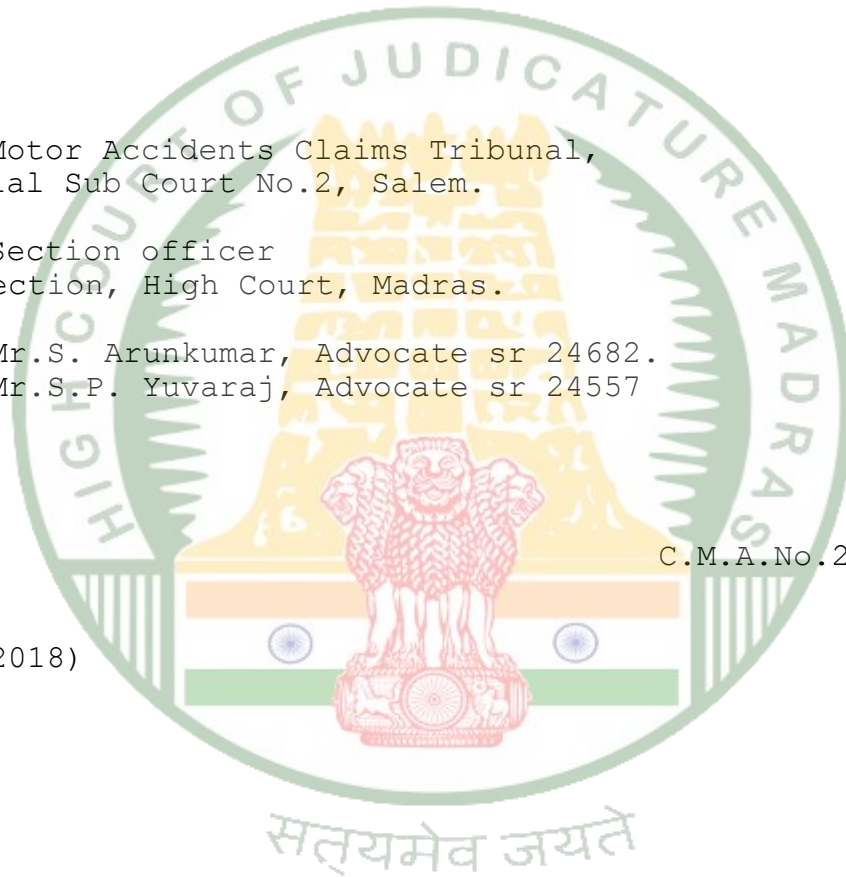
The Section officer
VR Section, High Court, Madras.

+1 CC to Mr.S. Arunkumar, Advocate sr 24682.

+1 CC to Mr.S.P. Yuvaraj, Advocate sr 24557

C.M.A.No.2370 of 2015

SP(06/06/2018)



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