

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.561 of 2015

and

M.P.No.1 of 2015

M/s.Future General India Insurance Co., Ltd.,
Chennai Karumitha Nilayam,
1st Floor, North Wing,
Old No.758, New No.192,
Anna Salai, Chennai - 600 002.

... Appellant

Vs.

1.A.Mathivanan
2.V.Manivel

... Respondents

Prayer:- Civil Miscellaneous Appeal filed against the Judgment and decree dated 14.11.2014 made in M.C.O.P.No.3939 of 2012 on the file of the Motor Accidents Claims Tribunal, IVth Court of Small Causes, Chennai.

For Appellant : Mr.B.Raghavan

For Respondents : Mr.A.A.Venkatesan (for R1)

R2 - Not served

JUDGMENT

The Appellant / Insurance Company has filed this Civil Miscellaneous Appeal against the order dated 14.11.2014 made in M.C.O.P.No.3939 of 2012, by the learned Motor Accidents Claims Tribunal, IVth Court of Small Causes, Chennai, on the grounds of the Quantum of the award.

2.The brief facts of the case are on 23.05.2011 at about 01:30 hours, while the injured was travelling as a load man in a load van bearing Registration No.TN-32-J-3952 from Tindivanam to Koyambedu, the said van driver, driven the load van in a very rash and negligent manner and lost his control and the van went out of the road and capsized and thereby cause the accident. As a result, the injured sustained grievous injuries and he was immediately brought to the hospital and admitted for treatment.

3.The Injured / Claimant has examined himself before the Tribunal, and marked the documents as exhibits P1 to P11 to substantiate his claim. The Injured / Claimant has examined two doctors on his side and marked the disability certificates Exhibits-P9 and P10.The Appellant / Insurance company has not examined any witness nor marked any documents on their side. The Tribunal considering the oral and documentary evidence and accepting the evidence of the injured, has awarded a sum of Rs.6,63,500/- as compensation under various heads.

4.The Appellant / Insurance Company counsel strongly contended that the award passed by the Tribunal is very much on the higher side and not reasonable and it will need interference of this Hon'ble Court and the appellant have not disputed the other findings of the Tribunal.

5.On the other hand, the Respondent / Injured counsel has argued that the Tribunal has passed reasonable award on the basis of evidence and documents and hence,the appeal is liable to be dismissed.

6.I heard Mr.B.Raghavan, learned counsel for the appellant and Mr.A.A.Venkatesan, learned counsel for the 1st respondent and carefully perused the materials available on records.

7.It is seen from the records that the injured has met with an accident at the age of 20 years, and sustained head injury, fracture of Left Pattela Knee, injury over mouth and the loss of nine teeth with multiple injuries all over the body. The Ortho Doctor PW2 assessed 30% disability and Dental Doctor assessed 40% disability.

8.The appellant questioning the disability assessed by the Doctors and contended that it is on higher side. The total disability sustained by the injured was assessed at 70%, but the Tribunal reduced the disability and determined the total disability at 65% which is reasonable one and allowed the compensation per percentage @ Rs.3,000/-, it comes around Rs.1,95,000/-towards under the heads of disability. The Respondent / Injured fixed artificial teeth, it ought to be changed once in 3 years. Hence, the Tribunal awarded Rs.1,95,000/- towards under the disability head which is reasonable and there is no reason warranting any interference and the same is confirmed.

9. In other aspects, this Court finds need to interfere with the total compensation amount awarded by the Tribunal as it is excessive and accordingly the same is hereby modified and reduced in other heads. The Tribunal awarded towards transportation to Hospital a sum of Rs.40,000/-, towards extra nourishment Rs.50,000/-, towards Pain & Suffering Rs.1,00,000/-, towards Medical Expenses Rs.50,000/- without any bills, towards Attender Charges Rs.40,000/-, towards Loss of Amenities Rs.40,000/-. These amounts are excessive and the same are reduced to Rs.20,000/- towards Transportation to Hospital, Rs.30,000/- towards Extra Nourishment, Rs.60,000/- towards Pain & Suffering, Rs.10,000/- towards Medical Expenses, Rs.25,000/- towards Attender Charges and Rs.25,000/- towards Loss of Amenities.

10. The other heads, the tribunal awarded Loss of Earning for Rs.45,500/- (Rs.6,500/- x 7 months) during the period of hospitalization is reasonable and confirmed. The tribunal awarded Rs.3,000/- towards Damage & Clothes and the same is reasonable and confirmed. The tribunal awarded towards Rs.50,000/- for Loss of Marital Status is reasonable, since the injured / claimant was met with an accident at the age of 20 years and sustained disability at 65%. The injured / claimant only sustained partial and permanent disability and it could not be affected the total avocation, but the tribunal awarded Rs.50,000/- towards Loss of Earning Power which was not justified and this Court held it is not proper and rejected the same.

11. The Break-Up details of the award under various heads are given below:-

Sl. No.	Heads	Awarded by Tribunal	Awarded by High Court
1.	Disability	Rs.1,95,000/-	Rs.1,95,000/-
2.	Transport to Hospital	Rs.40,000/-	Rs.20,000/-
3.	Extra Nourishment	Rs.50,000/-	Rs.30,000/-
4.	Pain and sufferings	Rs.1,00,000/-	Rs.60,000/-
5.	Medical Expenses	Rs.50,000/-	Rs.10,000/-
6.	Loss of Earnings	Rs.45,500/-	Rs.45,500/-
7.	Attender Charges	Rs.40,000/-	Rs.25,000/-
8.	Loss of Amenities	Rs.40,000/-	Rs.25,000/-
9.	Damages to Cloth	Rs.3,000/-	Rs.3,000/-
10.	Loss of Earning Power	Rs.50,000/-	NIL

Sl. No.	Heads	Awarded by Tribunal	Awarded by High Court
11.	Loss of Marital Status	Rs.50,000/-	Rs.50,000/-
	Total	Rs.6,63,500/-	Rs.4,63,500/-

12. In view of the above, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.6,63,500/- awarded by the Tribunal is hereby modified and reduced to Rs.4,63,500/-. The Appellant / Insurance company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum from the date of claim petition to till the date of deposit, after deducting the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the Tribunal shall transfer the entire award amount directly to the respective personal savings bank account of the Injured / Claimant through RTGS/NEFT system and permit the petitioner to withdraw the amount directly from the concern Bank. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

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

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No.58143

C.M.A.No.561 of 2015 and
M.P.No.1 of 2015

RJ(CO)
CS/30/11/2018