

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.3508 of 2017
and CMP.No.22337 of 2017

M/s. Reliance General Insurance Co. Ltd.,
Gee Jay Arcade, First Floor,
141/71- Thiruvengataswamy Road West,
R.S. Puram Post, Coimbatore District.

..Appellant/
3rd Respondent.

Vs

1.V. Nagaraj Tippa

..1st respondent/
Petitioner.

2.V. Santhoshkumar

3. E. Venkataramana

..Respondents 2 and 3/
Respondents 1 & 2

Civil Miscellaneous Appeal filed u/s.173 of Motor Vehicles Act, 1988, against the award and decree dated 07.10.2016 made in M.C.O.P.No.757 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Dharapuram.

For appellant : : Mr.S.Arun Kumar
for Respondents : : Mr.S.Santhan for R1

J U D G M E N T

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

The appeal has been preferred by the Insurance company against the award of Rs.37,74,702/- for the 50% disability assessed by the 1st respondent/claimant in the accident occurred on 03.12.2011, when the victim and three other persons were travelling in a car driven by the 2nd respondent very rash and negligently and losing control and got capsized. Therefore, the claimant/1st respondent sustained fracture on his hip, spine, legs, chest and bleeding injuries all over the body. Another traveller Siraj died on the spot.

2. Heard Mr.S.Arun kumar, learned counsel appearing for the appellant and Mr.S.Santhan, learned counsel appearing for the 1st respondent/claimant.

3. Mr.S.Arun Kumar would point out that even the claimant himself admitted that he did not lose job from the company in which he has been working at the time of the accident. Therefore, he would seek to set aside the award of Rs.25,80,000/- as awarded by the Tribunal, which was calculated applying multiplier method. However, Mr.S.Santhan would support the award.

4. It is clear from the records that the claimant sustained multiple injuries and he underwent many surgeries as proved by P.W.3-Doctor as well as Ex.P.34 and Ex.P.35 - Discharge summary issued by Ganga Hospital, Ex.P.36-Discharge summary issued by Fortis Hospital, Bangalore, Ex.P.41 to Ex.P.43- Scans, Ex.P.33-Wound Certificate. Though the doctor/P.W.3 determined the disability at 70%, the Tribunal determined the disability at 50% even in the absence of rebuttal evidence on the side of the appellant. When expert doctor determined the disability at 70% and in the absence of rebuttal evidence, the same has to be taken. Therefore, the reduction of disability at 70% to 50% is set aside and this court determines the disability at 70%.

5. It is proved by the appellant in the cross examination of P.W.1/the claimant, that the claimant did not lose the job. When that is the position, amount awarded viz., Rs.25,80,000/- as loss of income is unwarranted. Therefore, the same is set aside.

6. Taking into consideration the hospitalisation of the 1st respondent/claimant many time in the hospitals and the surgeries underwent, he would have taken leave atleast for nine months. Ex.P.51 is the salary certificate which shows that the claimant is earning about Rs.52,000/-. Therefore, for nine months, towards loss of payment, the Tribunal awarded Rs.2,40,000/- and the same is enhanced to Rs.4,68,000/-.

7. The Tribunal rightly awarded Rs.9,21,474/- towards medical expenses as Ex.P.37 series and the same is confirmed.

8. Since this court already set aside the amount towards loss of income awarded by the Tribunal, amount has to be awarded towards disability. This court determined the disability at 70% and awarding Rs.3000/- per percentage, a sum of Rs.2,10,000/- is granted towards disability.

9. A sum of Rs.18,228/- was rightly given towards Ambulance charges as per Ex.P.39 and the same is confirmed.

10. Rs.10,000/- awarded towards Attender Charges is enhanced to Rs.35,000/-, considering the long stay of the 1st respondent/claimant in the hospital for various periods.

11. No amount awarded towards Pain and Suffering. Therefore, this court awards a sum of Rs.1,00,000/-. Similarly for loss of amenities, a sum of Rs.2,00,000/- is awarded, considering the 70% disability sustained by the 1st respondent/claimant.

12. Rs.5000/- awarded towards Extra Nourishment is negligible and the same is enhanced to Rs.25,000/-.

13. The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1.	Disability	25,80,000/-	2,10,000/-
2.	Medical bills	9,21,474/-	9,21,474/-
3.	Attender charges	10,000/-	35,000/-
4.	Loss of income	2,40,000/-	4,68,000/-
5.	Ambulance charges	18,228/-	18,228/-
6.	Extra nourishment	5,000/-	25,000/-
7.	Pain and suffering	---	1,00,000/-
8.	Loss of amenities	---	2,00,000
	Total	37,74,702/-	19,77,702/- rounded off to Rs.20,00,000/-

14. In the result,

(i) this Civil Miscellaneous Appeal is Partly Allowed.

(ii) the award of Rs.37,74,702/- granted by the Tribunal is reduced to Rs.19,77,702/- and the same is rounded off to Rs.20,00,000/-.

(iii) The rate of interest fixed by the tribunal at 7.5% per annum stands confirmed.

(iv) The appellant/Insurance company is directed to deposit the entire modified award amount along with proportionate interest and cost, deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of the order.

(v) On such deposit, the Tribunal is directed to transfer the compensation amount to the account of the 1st respondent/claimant by RTGS within one week thereof.

(vi) No costs. Consequently, connected CMP.No.22337 of 2017 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Subordinate Court, Dharapuram.

2.The Section Officer,
VR Section,
High Court, Madras.

+lcc to Mr.S.Arun Kumar, Advocate sr.no.55448

+lcc to Mr.S.Santhan, Advocate sr.no.55958

C.M.A.No.3508 of 2017

sr(co)
nr 17/09/2018

सत्यमेव जयते

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