

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.413 of 2014
and M.P.No.1 of 2014

The Authorised Signatory
M/s.ICICI Lombard General
Insurance Company Ltd.,
1st Floor, Arihant Plaza
84/85, Waltax Road
Chennai-600 003

...Appellant/2nd respondent

vs

1.Mourougane ...1st respondent/Petitioner

2.Raman

(R2 was set exparte before
trial court)

...2nd Respondent/1st respondent

Civil Miscellaneous Appeal filed against the judgment and
decree dated 05.10.2012 made in MACT.O.P.No.802 of 2009 on the
file of Motor Accident Claims Tribunal (Principal Sub Judge)
(Presiding Officer) at Puducherry.

For appellant	:	:	Ms.Sree Vidhya
For Respondents	:	:	
for R1	:	:	Mr.V.R.Kamalanathan
for R2	:	:	Exparte.

J U D G M E N T

The appellant/Insurance Company has filed this appeal
against the judgment and decree dated 05.10.2012 made in
MACT.O.P.No.802 of 2009 on the file of Motor Accident Claims
Tribunal (Principal Sub Judge) (Presiding Officer) at Puducherry.

2. Heard the learned counsel for the Appellant/Insurance
Company and the learned counsel appearing for the 1st
respondent/injured claimant.

3. For convenience sake, the parties are referred to
hereunder according to their litigative status before the
Tribunal. It is a case of injury. On 08.05.2009 at about 8.30

p.m., when the petitioner was proceeding by walk on the left side of Tindivanam-Puducherry N.H.Road, at Kiliyanur, a Tata Indica Car bearing Reg.No.TN-32/T-8571 coming from Chennai towards Puducherry in a rash and negligent manner, dashed against the petitioner. Due to that impact, the petitioner was thrown out of the road and sustained fracture and other multiple injuries all over the body. Immediately, he was taken to JIPMER Hospital, Puducherry, and thereafter, he was shifted to MIOT Hospital, Chennai, and had taken treatment for the injuries sustained. The claimant filed a claim petition in M.C.O.P.No.802 of 2009 seeking compensation of Rs.15,00,000/-.

4. In support of the claim, the claimant examined himself as P.W.1 and P.W.2 doctor and Exhibits P.1 to P.31 were marked. On behalf of the Insurance Company, neither any witness was examined nor any document was marked before the Tribunal.

5. The Tribunal, after taking note of the oral evidence of P.W.1 and Exhibit P.1-Copy of F.I.R., Ex.P.3-Photo copy of Medico Legal Examination Report, Ex.P.26 Copy of Accident Inspection Report, held that the accident occurred only due to the rash and negligent driving of the car belonging to R1 (2nd respondent herein) by its driver and consequently, fixed the liability on the 2nd respondent/Insurance Company, to compensate the claimant.

6. The Tribunal taking note of oral evidence of P.W.2-Doctor and the documentary evidence Ex.P.31-Disability Certificate, Ex.P.3-Medico-Legal Examination Report, Ex.P.29-Discharge Summary, assessed the disability of the Petitioner/injured claimant at 40%. Accordingly, for 40% permanent disability sustained by the Petitioner, a sum of Rs.80,000/- has been awarded.

7. As far as purchase of medicines, consultation fees and charges for taking X-ray etc, even though, the petitioner/claimant has produced Exs.P4 to P.12, P.14 to P.18, Ex.P.20 to P.23 and P.30 as cash bills and Ex.P.13, P.19 for Rs.6,582/- and Rs.25,000/-, the Tribunal, following the dictum of various High Courts pointed out that Mediclaim Policy will cover the accidental injuries, however, allowed the amount mentioned in Ex.P.24-Rs.1,76,805/- and further added the sum mentioned for certain medical expenditure and granted compensation of Rs.1,82,500/-. Further, the Tribunal granted compensation towards "Pain and Suffering", "Travel Expenses", "Loss of earning", "Nutritious Food", "for undergoing Physiotherapy Exercises" and granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.N o.	Head	Amount granted by the Tribunal
1	Permanent disability	Rs. 80,000/-
2	Medical Expenses	Rs. 1,82,500/-
3	Pain and Suffering	Rs. 10,000/-
4	Travel Expenses/Transportation	Rs. 20,000/-
5	Loss of earning	Rs. 15,000/-
6	Nutritious Food	Rs. 5,000/-
7	For undergoing Physiotherapy Exercises	Rs. 24,000/-
	Total	Rs. 3,36,500/-
	Total amount awarded by Tribunal	Rs. 3,16,500/-

8. The learned counsel for the appellant/Insurance Company submitted that the petitioner/injured claimant has secured compensation from ESI and hence, he is not eligible for getting compensation for his medical treatment. She further submits that the Petitioner had secured reimbursement of medical expenses from his employer-United India Insurance Company Ltd., and therefore, the appellant/Insurance company is not liable to pay any compensation amount towards medical expenses. The learned counsel further submits that the compensation awarded for the injury sustained by the claimant is on the higher side and prayed for reduction of compensation on all heads.

9. Having gone through the award passed by the Tribunal and also going through the nature of injuries suffered by the claimant in the accident, particularly the disability suffered by him i.e, 40%, this court is inclined to enhance the compensation awarded to the claimant under the heads "Permanent disability", "Loss of Earning" and "Pain and suffering". Further, this Court also feels it appropriate to reduce the compensation towards "Medical Expenses", since the petitioner admittedly got reimbursement for his medical expenses, as pointed out by the learned counsel for the Insurance Company. In other aspects, the Award passed by the Tribunal, is just and proper and the same needs no interference.

10. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
1	Permanent disability	Rs. 80,000/-	Rs. 1,40,000/-
2	Medical Expenses	Rs. 1,82,500/-	Rs. 25,000/-
3	Pain and Suffering	Rs. 10,000/-	Rs. 20,000/-

Sl. No.	Head	Amount granted by the Tribunal	Amount awarded by this Court
4	Travel Expenses	Rs. 20,000/-	Rs. 20,000/-
5	Loss of earning	Rs. 15,000/-	Rs. 19,500/-
6	Nutritious Food	Rs. 5,000/-	Rs. 10,000/-
7	For undergoing Physiotherapy Exercises	Rs. 24,000/-	Rs. 24,000/-
8	Total	Rs. 3,36,500/-	Rs. 2,58,500/-
	Total amount granted by Tribunal.	Rs. 3,16,500/-	

11. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

- (i) The award of the Tribunal is modified to Rs.2,58,500/- from Rs.3,16,500/-.
- (ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.
- (iii) In view of the above modified award amount, the appellant respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of three months from the date of receipt of a copy of this order.
- (iv) On such deposit, the injured claimant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on the filing of such application.
- (v) There will be no order as to costs in this appeal.
- (vi) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Motor Accidents Claims Tribunal,
Principal Sub Judge, Puducherry.

2.The Section Officer,
V.R.Section, High Court, Madras.

+ 1 cc to Mr. R. Sreevidya, Advocate Sr.1218

+ 1 cc to Mr. V.R. Kamalanathan, Advocate Sr.772

C.M.A.No.413 of 2014

MR(CO)
EU(19/02/2018)



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