IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.1425 and 1426 of 2008

The Divisional Manager,
The New India Assurance Co.Ltd.,
No.1, Bharathi Road,
Cuddalore-1. ...Appellant in both appeals/
2nd Respondent

Vs

Alwar ..1st respondent in
CMA.No.1425 of 2008/Petitioner

Rajkumar ..1st respondent in
CMA.No.1426 of 2008/Petitioner

2. Karthikeyan .. 2nd respondent in
both Appeals/1st Respondent

Prayer in CMA.No.1425 of 2008 :
Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.905 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Cuddalore dated 23.10.2007.

Prayer in CMA.No.1426 of 2008 :
Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MACTOP.No.967 of 2005 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Cuddalore dated 23.10.2007.

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For Appellant in
both appeals : Mr.M. Krishnamoorthy

For Respondents in
both appeals : Mr.R.Sreedhar for R1
R2- no appearance

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COMMON JUDGMENT

The instant appeals have been filed challenging the common Award dated 23.10.2007 passed in MCOP.Nos.905 and 967 of 2005 by the Motor Accident Claims Tribunal, (Principal Subordinate Judge), Cuddalore.

2. The brief facts leading to the filing of the instant appeal are as follows;

(i) The first respondent in both the appeals sustained injuries as a result of an accident that occurred on 19.4.2005 caused by a Hero Honda Motor Cycle bearing Registration No.PY-01-R-2523 owned by the 2nd respondent and insured with the appellant. The 1st respondent in both the appeals filed separate claims MCOP.No.905 of 2005 and MCOP.No.967 of 2005 before the Motor accident Claims Tribunal seeking compensation.

(ii) The Motor Accident Claims Tribunal, by its Award dated 23.10.2007 passed in MCOP.Nos.905 and 967 of 2005 directed the appellant to pay the 1st respondent in CMA.No.1425 of 2008, a sum of Rs.2,17,600/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation and directed the appellant to pay the 1st respondent in CMA.No.1426 of 2008, a sum of Rs.2,73,200/- together with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the common Award dated 23.10.2007 passed in MCOP.Nos.905 and 967 of 2005, the instant appeals have been filed by the Insurance Company challenging its liability as well as the quantum of compensations awarded by the Tribunal.

3. Heard Mr.M. Krishnamoorthy learned counsel for the appellant and Mr. Sridhar, learned counsel for the 1st respondent in both the appeals.

4. Learned counsel for the appellant submits that the Insurance company is not liable to pay the compensation since the vehicle insured with the appellant was stolen on 11.3.2005, pursuant to which, the number plate was changed as TN-01-C-1052 by the person who had committed theft and the impugned accident was caused on 19.4.2005 while a person without valid and effective driving licence was riding the motor cycle.

5. As regards the quantum of compensation awarded by the tribunal, the learned counsel for the appellant would submit that the tribunal ought not have applied the multiplier method considering the fact that the injured sustained only 40% disability as a result of the accident. Further, learned counsel would submit that the injuries sustained by the 1st respondent in both the appeals did not cause any loss to their

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earning capacity.

6. Per contra, learned counsel for the 1st respondent in both the appeals submits that the 1st respondent in C.M.A.1425 of 2008 2006 was 22 years old and in C.M.A.No.1426 of 2008, he was 42 years old at the time of the accident. In both the cases, according to the learned counsel, the respective injured claimants have lost their earning capacity as a result of the grievous injuries sustained by them. Therefore according to him, the tribunal has rightly applied the multiplier method in awarding compensation to the injured claimants in both the appeals.

7. This Court, after having considered the materials available on record and after hearing the submissions of the respective counsels, observes the following;

a. the appellant has not called upon the 2nd respondent who is the owner of the vehicle to produce the driving licence of the driver who drove the vehicle at the time of accident and also did not call upon the insured to produce other records including the Registration Certificate for the said vehicle. No evidence has been produced by the appellant before the tribunal to prove that the vehicle involved in the accident is a stolen vehicle. Therefore, in the considered view of this Court, the insurance company could not be exonerated from its liability to pay the 1st respondent in both the appeals for the injuries sustained by them as a result of the accident.

b. The 1st respondent in CMA.No.1425 of 2008 produced the disability certificate which was marked as an exhibit before the tribunal disclosing that he had suffered 30% disability. No contra evidence has been produced by the appellant to disprove the disability of the 1st respondent. Similarly in CMA.1426 of 2008, the 1st respondent produced a disability certificate which is marked as an exhibit to disclose that he suffered 40% disability. No contra evidence has been produced by the appellant to disprove the disability of the 1st respondent.

c. In both the cases, no sufficient evidence has been let in by the 1st respondent to prove that due to the injuries sustained him, as a result of the accident, they had suffered loss of earning capacity. Therefore, this Court is of the considered view that the multiplier method ought not to have been applied by the tribunal in assessing the disability compensation. But admittedly the 1st respondent in both the appeals have sustained grievous injuries which is not disputed by the appellant.

d) The 1st respondent in CMA.No.1425 of 2008 sustained fracture of frontal bone, fracture in left Maxilla bone, injury on fore head, injury on face . He was hospitalised

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between 19.4.2005 to 28.4.2005. The 1st respondent in CMA.No.1426 of 2005 sustained injuries and fracture on the right hand, fracture on pelvis, multiple injuries on face, injury on left leg and injury on left great toe. He was hospitalised for two days between 19.4.2005 to 20.4.2005.

e) Considering the nature of injuries sustained by the 1st respondent in both the appeals and also their age, they have to be adequately compensated. Though the tribunal has committed an error in applying the multiplier method,the 1st respondent will have to be adequately compensated under various other heads.

11. In the light of the above observations, this Court is of the considered view that the 1st respondent in both the appeals will have to be compensated in the following manner.

OP.No.905 of 2005 arising out of CMA.No.1425 of 2008

Sl. No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Permanent Disability	Rs. 1,83,600/-	Rs. 60,000/-
2	Medical Bill	Rs. 9,000.	Rs. 9,000/-
3	Future medical expenses	Rs. 5,000/-	Rs. 10,000/-
4	Nourishment	Rs. 5,000/-	Rs. 10,000/-
5.	Transportation	Rs. 5,000/-	Rs. 10,000/-
6.	Pain and Sufferings	Rs. 10,000/-	Rs. 30,000/-
7	Loss of amenities	NIL	Rs. 20,000/-
	Total	Rs.2,17,000/-	Rs.1,49,000/-

OP.No.967 of 2005 arising out of CMA.No.1426 of 2008

Sl. No.	Head	Amount Awarded by the Tribunal	Amount awarded by this Court
1	Permanent Disability	Rs. 2,44,800/-	Rs.80,000/-
2	Medical Bill	Rs. 8,400/-	Rs. 8,400/-
3	Future medical expenses	Rs. 5,000/-	Rs.10,000/-
4	Nourishment	Rs. 5,000/-	Rs.10,000/-
5.	Transportation	Rs. 2,500/-	Rs. 5,000/-
6.	Attendant charges	Rs. 2,500/-	Rs. 5,000/-

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7	Pain and sufferings	Rs. 5,000/-	Rs.30,000/-
	Loss of amenities	NIL	Rs.25,000/-
	Total	Rs.2,73,200/-	Rs.1,73,400/-

12. In the result,

i)both the Civil Miscellaneous Appeals are partly allowed. No costs. Consequently, the connected M.P.Nos.1 & 1 of 2008 are closed.

ii) In CMA.No.1425 of 2008, the compensation awarded by the tribunal is reduced from Rs.2,17,000/- to Rs.1,49,000/- along with interest at the rate of 7.5% from the date of claim, till the date of realisation.

iii) In CMA.No.1426 of 2008, the compensation awarded by the tribunal is reduced from Rs.2,73,200/- to Rs.1,73,400/- along with intereat at the rate of 7.5% from the date of claim, till the date of realisation.

iv) It is represented that 50% of Award amount has already been deposited in both the appeals. The Insurance company in both the CMAs is directed to deposit the modified compensation amount awarded by this Court along with interest as stated above, after adjusting the amount, already deposited in to the credit of respective MACTOPs, and on such deposit being made, the 1st respondent in both the CMAs, are permitted to withdraw the same on filing appropriate applications.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

msr

To

1. The Motor Accidents Claims Tribunal
(Principal Subordinate Judge)
Cuddalore

2. The Record Clerk,
VR Section, High Court, Madras (2 Copies)

+2cc to Mr.M. Krishnamoorthy, Advocate, S.R.No.61984, 91989
+2cc to Mr.R.Sreedhar, Advocate, S.R.No.62075, 62076

C.M.A.Nos.1425 and 1426 of 2008

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