

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.1031 and 1032 of 2015
and M.P.Nos.1 & 1 of 2015

The Oriental Insurance Co. Ltd.,
Branch office, II floor
S.K.S.plaza, Near police station
Perundurai - 638 052.

Appellant/3rd Respondent in
both CMAs.

Vs.

1.Veeramalai ... 1st Respondent in
C.M.A.No.1031 of 2015/ Petitioner

1.Sivakumar ... 1st Respondent in
C.M.A.No.1032 of 2015/Petitioner

2.R.Karthikeyan ... 1st Respondent/2nd Respondent

3.N.Palanisamy ... Respondents 2 and 3 in
both CMAs.

(Respondents 2 and 3 remained exparte)

Prayer: These Civil Miscellaneous Appeals are filed under
Section 173 of Motor Vehicles Act, 1988, against the judgment
and decree dated 30.07.2014 made in M.C.O.P.Nos.190 & 194 of
2013 on the file of the Motor Accidents Claims Tribunal, Sub
Court, Perundurai.

In both CMAs.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.R.Nalliyappan

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed by the
appellant/Insurance Company challenging the award dated
30.07.2014 made in M.C.O.P.Nos.190 & 194 of 2013 on the file of
the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

2.Both the appeals arise out of the same accident and common award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to by their respective ranks in the claim petitions for the sake of convenience.

3.The appellant is 3rd respondent/Insurance Company in M.C.O.P.Nos.190 & 194 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai. The claimants filed the said claim petition claiming a sum of Rs.10,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 14.03.2013.

4.According to the claimants, on the date of accident i.e., on 14.03.2013 at 9.00 a.m., while the claimant in C.M.A.No.1032 of 2015 was riding in his motorcycle along with the claimant in C.M.A.No.1031 of 2015 as pillion rider on Nathakadaiyur to Four road, from East to West direction near Rathinapuri, Perundurai Taluk, a JCB vehicle belonging to the 2nd respondent, which came in the opposite direction, driven by the 1st respondent in a rash and negligent manner, hit the claimants' motorcycle. Due to the said impact, the claimants fell down on the road and suffered grievous injuries. Therefore, the claimants have filed the above claim petitions claiming compensation.

5.The respondents 1 and 2, driver and owner of the vehicle, remained exparte before the Tribunal.

6.The 3rd respondent/Insurance Company filed counter statement denying the averments made in the claim petitions and contended that the 1st respondent/driver of the offending vehicle was not responsible for the accident. The rider of the motorcycle did not possess valid driving license at the time of accident. The claim petition is bad for non-joinder of owner and insurer of the motorcycle. The accident occurred due to rash and negligent riding of the motor cycle by the claimant in C.M.A.No.1032 of 2015 and the 3rd respondent/Insurance Company is not liable to pay compensation.

7.Before the Tribunal, both the claimants in C.M.A.Nos.1032 and 1032 of 2015 examined themselves as P.W.1 and P.W.2 respectively and one Dr.Senthilkumar was examined as P.W.3 and marked 54 documents as Exs.P51 to P54. On the side of the respondents, no oral and documentary evidence was let in.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent/driver of the JCB machine belonging to the 2nd respondent and directed the respondents 1 & 2 as well as the 3rd respondent/Insurance Company being insurer of the said JCB machine to jointly and severally

pay a sum of Rs.10,00,000/- each as compensation to the claimants.

9. Against the said award dated 30.07.2014 made in M.C.O.P.Nos.190 & 194 of 2013, the 3rd respondent/Insurance Company has come out with the present appeals challenging quantum of compensation.

10. The learned counsel appearing for the 3rd respondent/Insurance Company contended that the Tribunal erred in awarding a sum of Rs.10,00,000/- each as compensation to the claimants for fracture of femur in the right leg. P.W.2/Doctor has assessed the disability of the claimants at 48.4% and 42.5% respectively, which are excessive. P.W.2 has neither treated the claimants nor followed the guidelines to assess the disability. The Tribunal erred in adopting multiplier method without considering as to whether the disability suffered by the claimants affects their loss of earning capacity. The monthly income fixed by the Tribunal and the amount awarded by the Tribunal towards transportation are excessive. The Tribunal erred in awarding a sum of Rs.1,00,000/- towards loss of marital prospects without any acceptable evidence. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11. Per contra, the learned counsel appearing for the claimants contended that both the claimants were students studying B.E. IV year. They have sustained fracture on their right leg, screws & plates were implanted and skin grafting were done. The claimant in M.C.O.P.No.190 of 2013 underwent two surgeries and the claimant in M.C.O.P.No.194 of 2013 underwent seven surgeries. Due to the injuries sustained by them, their marital prospects were affected. The Tribunal after considering all the aspects in proper perspective, has awarded compensation, which is not excessive and prayed for dismissal of the appeals.

12. Heard the learned counsel appearing for the claimants as well as 3rd respondent/Insurance Company and perused the materials available on record.

13. From the materials available on record, it is seen that the claimant in M.C.O.P.No.190 of 2013 (C.M.A.No.1031 of 2015) has contended that he was B.E. IV year student at the time of accident, he suffered fracture of right tibia and fibula, screws and rods were implanted and surgery was performed on his right femur. He took treatment as in-patient in the hospital from 14.03.2013 to 26.03.2013. Due to the injuries, he lost his earning capacity. P.W.3/Doctor has assessed the disability of the claimant at 48.4% as per combined formula. The Tribunal considering the fact that the claimant was a B.E. student as well as considering the nature of injuries sustained by him and

relying on the judgments of the Hon'ble Apex Court, fixed a sum of Rs.7,500/- as monthly income of the claimant and fixed 48% disability, which is proper. The claimant was aged 23 years at the time of accident and the Tribunal applied multiplier '17'. As per the Division Bench judgment of this Court reported in 2005 1 CTC 38 (United India Insurance Company vs. Veluchamy), lesser multiplier can be applied while awarding compensation to the injured claimant. Therefore, multiplier '12' is applied and accordingly, the loss of income awarded by the Tribunal is modified to Rs.5,18,400/- (Rs.7,500/- X 12 X 12 X 48/100). The claimant was aged 23 years at the time of accident, due to the injuries, he suffered permanent disability and therefore, his marital prospect was affected. In such circumstances, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of marital prospects is proper. Considering the injuries sustained by the claimant and the documents filed by him, a sum of Rs.75,000/- and Rs.50,000/- awarded by the Tribunal towards pain & suffering and transportation are excessive and the same are hereby reduced to Rs.50,000/- and Rs.10,000/- respectively. The amounts awarded by the Tribunal under other heads are not excessive and the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of income	7,34,400	5,18,400	Enhanced
2.	Pain and suffering	75,000	50,000	Reduced
3.	Extra nourishment	30,000	30,000	Confirmed
4.	Transportation	50,000	10,000	Reduced
5.	Medical expenses	2,20,150	2,20,150	Confirmed
6.	Loss of marital prospects	1,00,000	1,00,000	Confirmed
7.	Future medical expenses	50,000	50,000	Confirmed
	Total	12,59,550	9,78,550	Reduced by Rs.21,450/-

	Tribunal awarded the compensation as claimed by the claimant	10,00,000		
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14.As far as the quantum of compensation in respect of the claimant in M.C.O.P.No.194 of 2013 (C.M.A.No.1032 of 2015) is concerned, it is the contention of the learned counsel appearing for the 3rd respondent/Insurance Company that the Tribunal erred in fixing a sum of Rs.7,500/- as monthly income of the claimant, which is excessive and erred in accepting the evidence of PW3/Doctor with regard to the nature of injuries. From the materials available on record, it is seen that the claimant has contended that he was B.E. IV year student at the time of accident. As per the evidence of PW3/Doctor, the claimant sustained fracture on his right femur, screws and rods were implanted, skin grafting was done and the disability of the claimant was assessed at 42.5% as per combined formula. The Tribunal considering the evidence of P.W.3/Doctor, has fixed the disability of the claimant at 42%, which is proper. The claimant has contended that he took treatment as in-patient in the hospital from 14.03.2013 to 03.04.2013 and 15.10.2013 to 18.10.2013, underwent seven surgeries and due to the injuries, he lost his earning capacity. Though the learned counsel appearing for the 3rd respondent contended that after the accident, the claimant is doing business and is earning, they have not marked any documentary evidence to prove the same. The Tribunal considering the fact that the claimant was a B.E. student as well as considering the nature of injuries sustained by him and relying on the judgments of the Hon'ble Apex Court, fixed a sum of Rs.7,500/- as monthly income of the claimant, which is correct. By applying multiplier 17, the Tribunal has awarded a sum of Rs.6,42,600/- towards loss of income. The claimant was aged 23 years at the time of accident and the correct multiplier is 18. If multiplier 18 is applied, the amount awarded by the Tribunal towards loss of income comes to Rs.6,80,400/- (Rs.7,500/- X 12 X 18 X 42%). Due to the injuries, the claimant suffered permanent disability and therefore, his marital prospect was affected. In such circumstances, a sum of Rs.1,00,000/- awarded by the Tribunal towards loss of marital prospects is proper. The Tribunal after considering all the aspects in proper perspective, has awarded a sum of Rs.10,00,000/- as compensation to the claimant under different heads. In my considered opinion, the compensation awarded by the Tribunal is not excessive, the same is just and reasonable and it does not warrant any interference by this Court.

15. In the result, C.M.A.No.1031 of 2015 (M.C.O.P.No.190 of 2013) is partly allowed and the compensation awarded by the Tribunal at Rs.10,00,000/- is hereby reduced to Rs.9,78,550/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. C.M.A.No.1032 of 2015 (M.C.O.P.No.194 of 2013) is dismissed and the sum of Rs.10,00,000/- awarded by the Tribunal as compensation to the claimant, along with interest and costs is confirmed. The 3rd respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court in C.M.A.No.1031 of 2015 and the entire amount awarded by the Tribunal in C.M.A.No.1032 of 2015, along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant in C.M.A.No.1031 of 2015 is permitted to withdraw the award amount now determined by this Court and the claimant in C.M.A.No.1032 of 2015 is permitted to withdraw the entire amount awarded by the Tribunal, along with interest and costs, less the amount if any, already withdrawn. The 3rd respondent/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.190 of 2013 (C.M.A.No.1031 of 2015), if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge
The Motor Accident Claims Tribunal
Perundurai.

2. The Section Officer
V.R. Section
High Court, Chennai.
+2 Ccs to Mr.R.Nalliyappan, Advocate sr 101543.
+2 Ccs to Mr.M.Krishnamoorthy, Advocate sr 101719.

C.M.A.Nos.1031 and 1032 of 2015

SPD (CO)
SP (01/09/2020)