

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.283 of 2015 and
M.P.No.1 of 2015

Royal Sundaram Alliance Insurance Co. Ltd.,
8-H-1, Mangalam Building, Omalur Main Road,
4 Road, Salem - 7. .. Appellant/2nd Respondent

Vs.

1.Natarajan 1st Respondent/Petitioner
2.Diwakar ... 2nd Respondent/2nd Respondent
(R2 remained exparte before Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 16.09.2014 made in M.C.O.P.No.469 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.M.Krishnamoorthy
For R1 : Mr.R.Nalliyappan
R2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against award dated 16.09.2014 made in M.C.O.P.No.469 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

2.The appellant is the second respondent in M.C.O.P.No.469 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem. The first respondent filed the above said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.12.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the second respondent and directed the appellant-Insurance Company being the insurer of the said car to pay a sum of

Rs.5,95,000/- as compensation to the first respondent/claimant.

4. Against the said award dated 16.09.2014 made in M.C.O.P.No.469 of 2012, the appellant has come out with the present appeal challenging the quantum of compensation granted by the Tribunal.

5. The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in awarding excessive amounts as compensation for fracture in the right leg of the first respondent. The Tribunal ought to have rejected the percentage of disability assessed by P.W.2/Doctor. The first respondent suffered only one fracture, whereas P.W.2/Doctor has certified that first respondent suffered two fractures. There is differences in the discharge summary and wound certificate. The Tribunal ought to have rejected the hand written remarks in the discharge summary. The first respondent is retired head constable and receiving pension. In the complaint given by the first respondent he has stated that after his retirement, he is at home along with his family. The first respondent has not proved that he was doing real estate business and due to the injuries he lost income. In such circumstances, the multiplier method adopted by the Tribunal is erroneous. The Tribunal erred in fixing monthly income of the first respondent at Rs.5,000/-. The Tribunal considering the fact that the first respondent was receiving only pension ought not to have granted compensation of Rs.45,000/- towards loss of income for nine months. The amount awarded by the Tribunal towards medical expenses is excessive. The first respondent is entitled to reimbursement from the State Government and prayed for setting aside the award passed by the Tribunal.

6. Per contra, the learned counsel appearing for the first respondent contended that first respondent after retirement was doing real estate business and was earning a sum of Rs.20,000/- per month. He suffered two fractures and he could not do the work as he was doing earlier. The Tribunal considering the evidence let in by the first respondent, fixed monthly income of the first respondent at Rs.5,000/- and applied multiplier method and granted compensation, which is not excessive. The Tribunal has granted meager amounts as compensation towards loss of amenities, transportation, extra nourishment, pain and sufferings and damages to clothes and prayed for dismissal of the appeal.

7. I have heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the entire materials on record.

8. From the materials available on record, it is seen that the first respondent has contended that he suffered fractures and due to the injuries and treatment taken by him, he could not do his real estate business and has lost his income. To substantiate his contention, he examined P.W.2/Doctor, who deposed about the nature of injuries and treatment taken by the first respondent and assessed disability at 55%. The Tribunal considering the contention of the first respondent that he was doing real estate business after his retirement adopted multiplier method as P.W.2/Doctor certified that he cannot continue his real estate business. The learned counsel for the appellant contended that in the complaint given by the first respondent, he has stated that after his retirement he is at home without doing any business. The Tribunal failed to consider 55% disability assessed by P.W.2/Doctor relates to only part of the body and not to the whole body. Considering the nature of injuries, evidence of P.W.2/Doctor and materials on record, the first respondent is entitled to compensation for 55% disability only on percentage method. The Tribunal has granted a sum of Rs.2,97,000/- towards loss of earning capacity and Rs.50,000/- towards permanent disability. The accident has occurred in the year 2010. The first respondent is entitled to compensation for 55% disability at the rate of Rs.3,000/- per percentage. Thus, the compensation awarded by the Tribunal towards loss of earning capacity and permanent disability is modified to Rs.1,65,000/- [Rs.3,000/- X 55]. The appellant has not proved that the first respondent has got reimbursement for the amount spent by him for the medical expenses from the State Government. Therefore, the first respondent is entitled to compensation for medical expenses as per the bills. The Tribunal has granted meager sum of Rs.30,000/- towards loss of amenities and the same is hereby enhanced to Rs.50,000/-. A sum of Rs.10,000/- granted by the Tribunal towards transportation is hereby enhanced to Rs.20,000/-. Considering the nature of injuries, period of treatment taken by the first respondent and percentage of disability, a sum of Rs.10,000/- and Rs.40,000/- respectively granted by the Tribunal towards extra nourishment and pain and sufferings are hereby enhanced to Rs.20,000/- and Rs.50,000/-. A meager sum of Rs.700/- granted by the Tribunal towards damage to clothes is hereby enhanced to Rs.2,000/-. The compensation granted by the Tribunal towards attendant charges and loss of income are 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
1.	Loss of earning capacity and permanent disability	2,97,000/- and 50,000/-	1,65,000/-	reduced
2.	Pain and sufferings	40,000/-	50,000/-	enhanced
3.	Medical bills	87,300/-	87,300/-	confirmed
4.	Loss of amenities	30,000/-	50,000/-	enhanced
5.	Transportation	10,000/-	20,000/-	enhanced
6.	Extra nourishment	10,000/-	20,000/-	enhanced
7.	Attendant charges	25,000/-	25,000/-	confirmed
8.	Damage to clothes	700/-	2,000/-	enhanced
9.	Loss of income	45,000/-	45,000/-	confirmed
	Total	Rs.5,95,000/-	Rs.4,64,300/-	reduced by Rs.1,30,700/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,95,000/- is hereby modified to Rs.4,64,300/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court, 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 first respondent is permitted to withdraw the modified award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Special Subordinate Judge No.2,
Motor Accident Claims Tribunal,
Salem.

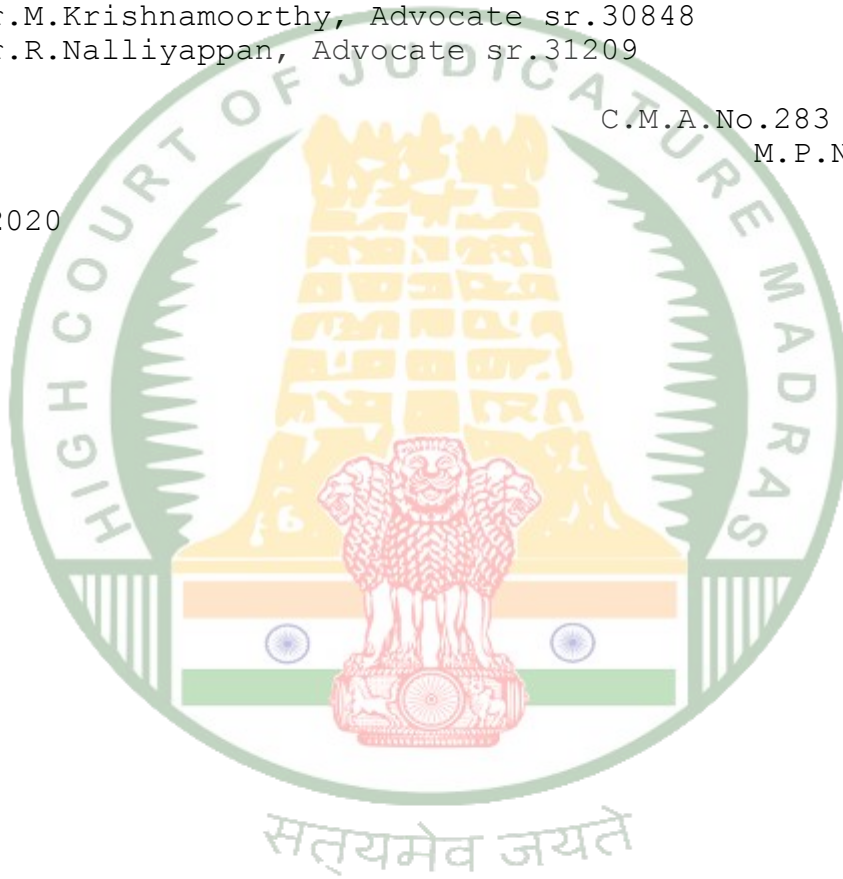
2.The Section Officer,
VR Section,
High Court,
Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate sr.30848

+1cc to Mr.R.Nalliyappan, Advocate sr.31209

C.M.A.No.283 of 2015 and
M.P.No.1 of 2015

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