

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2552 & 3263 of 2019
and
C.M.P.No.12186 of 2019

C.M.A.Nos.2552 of 2019

United India Insurance Co. Ltd.,
No.63C, Palayamkottai Road,
Behind Government Hospital,
Tiruchendur - 628 215. ... Appellant/2nd Respondent

Vs

1.P.Thalaimalai Ayyer,
S/o.Panchanam,
Plot No.17, Mettu Street,
Ayanavaram, Chennai 23. 1st Respondent/Claimant

2.The Secretary,
Govindammal Adithanar College for Women,
Thirunelveli Road,
Thiruchendur 626 215.2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed against the award and
decree dated 07.09.2018 made in M.C.O.P.No.3374 of 2014 on the
file of the Motor Accident Claims Tribunal (In the III Court of
Small Causes), Chennai.

For Appellant :Mr.D.Bhaskaran
For Respondents :Mr.Varadhakamaraj (for R1)

C.M.A.No.3263 of 2019

P.Thalaimalai Ayyer,
S/o.Panchanam,
Residing at
Plot No.17, Mettu Street,
Ayanavaram, Chennai 23. ... Appellant/Claimant

Vs

1.The Secretary,
Govindammal Adithanar College for Women,
Thirunelveli Road,
Tiruchendur 626 215.

2.United India Insurance Co. Ltd.,
No.63C, Palayamkottai Road,
Behind Government Hospital,
Tiruchendur 628 215.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the Decree and Judgment dated 07.09.2018 made in MCOP.No.3374 of 2014 on the file of Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellant :Mr.Varadhakamaraj.K

For Respondents :Mr.D.Baskaran (for R2)

C O M M O N J U D G M E N T

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

The appeals have been preferred by the claimant as well as by the Insurance Company aggrieved over the quantum of compensation of Rs.30,62,500/- granted to the claimant, who sustained injuries, leading to amputation of right hand above elbow, in the accident occurred on 12.02.2014, when the victim was riding a motorcycle on Tiruchendur to Thirunelveli main road, in front of Govindammal Athithanar College and hit by a bus which turned from the left side of the road to the right side.

2.Heard, Mr.K.Varadhakamaraj, learned counsel appearing for the claimant and Mr.D.Baskaran, learned counsel appearing for the Insurance Company.

3.It is argued by Mr.D.Baskaran, learned counsel appearing for the Insurance Company that the accident occurred because of the rash and negligent driving of the claimant as he himself has negligently ridden the two wheeler and hit the bus which was turning from left line of the road to right line for entering into the college. However, Mr.K.Varadhakamaraj, learned counsel appearing for the claimant would submit that without any signal, the bus has turned towards right side and hit the two wheeler. A perusal of the records would show that the accident occurred because of the rash and negligent driving of the bus as proved by Ex.P.1/charge sheet which has been filed against the driver of the bus and also as per PW1's evidence. There is no rebuttal evidence adduced on the side of the Insurance Company. Therefore, the Tribunal has rightly found that the accident occurred because of the bus, insured with the

insurance company.

4.It is proved before the Court that the claimant sustained following serious injuries leading to amputation of right hand above the elbow:

"(i)Segmental fracture with stetno clavicular dislocation.

(ii)Left side both pubic rami fracture with SI joint disruption.

(iii)Fracture 2nd, 3rd, 4th ribs"

He was admitted in Devadoss Multi Specialty Hospital, Madurai and a surgery was conducted to amputate his right hand as proved by Ex.P.3/discharge summary. He was hospitalised for more than a month from 12.02.2014 to 16.03.2014. Even as per Employees Compensation Act, Schedule I Part II, for amputation of limb above elbow disability is 80% and therefore, fixing of 80% disability by the Tribunal as per Ex.P.3/discharge summary, Ex.P.4/Scan report and Ex.P.10/Disability certificate is confirmed. It is noted that Ex.P.10/disability certificate has been issued by K.K.Nagar Peripheral Hospital, Chennai.

5.PW1 in his evidence categorically stated that the claimant was working as water can supplier and was earning a sum of Rs.20,000/- per month. The Tribunal in the absence of any proof fixed the notional income at Rs.10,000/- per month, added 50% towards future prospects as the claimant was aged about 21 years as proved by Ex.P.6/copy of driving licence and applied right multiplier "18".

6.However, Mr.D.Baskaran, learned counsel appearing for the Insurance Company would submit that Rs.10,000/- fixed by the Tribunal as notional income is on the higher side. Therefore, this Court reduces the same to Rs.9,000/- per month.

7.Since the age of the claimant is 21 years, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% only has to be added towards future prospects. Therefore the loss of earning capacity of the claimant would be at Rs.21,77,280/- [(Rs.9,000/- + Rs.3,600/-) x 12 x 18 x 80%]

8.The Tribunal has awarded a sum of Rs.1,47,866/- towards medical expenses, a sum of Rs.50,000/- towards extra nourishment, a sum of Rs.50,000/- towards future medical expenses, a sum of Rs.25,000/- towards transportation, a sum of Rs.20,000/- towards loss of income during the period of treatment and a sum of Rs.1,000/- towards damages to clothes. The same are confirmed.

9.A sum of Rs.45,000/- has been awarded by the Tribunal under the head of disability. The same is deleted as this Court has already awarded some amount towards loss of earning capacity by applying multiplier method.

10.Pain and suffering:

The Tribunal has awarded a sum of Rs.1,00,000/- under this head which is low as the claimant sustained grievous injuries, leading to amputation of right hand. Therefore, the same is enhanced to Rs.2,00,000/-.

11.Loss of amenities:

The Tribunal has awarded a sum of Rs.25,000/- under this head. Considering the disability sustained by the claimant, the same is enhanced to Rs.1,00,000/-.

12.Loss of marital prospects:

Though the Tribunal has not awarded any amount under this head, a sum of Rs.1,00,000/- is awarded under this head.

13.Attendant charges:

The Tribunal has awarded a sum of Rs.6,600/- under this head. Considering the period of treatment, a sum of Rs.1,00,000/- is awarded under this head.

Head	Amount (Rs.)
Loss of earning capacity	2177280
Medical expenses	147866
Extra nourishment	50000
Future medical expenses	50000
Transportation	25000
Loss of income during the period of treatment	20000
Damages to clothes	1000
Pain and sufferings	200000
Loss of amenities	100000
Loss of marital prospects	100000
Attendant charges	100000
Total	2971146

14.Hence, the total compensation payable in this case is Rs.29,71,146/-, rounded off to Rs.29,71,200/- along with interest at the rate of 7.5% per annum.

15.The Insurance company is directed to deposit the

entire award amount along with interest (except for Rs.50,000/- awarded towards future medical expenses) and costs as per the award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer a sum of Rs.20,00,000/- to the personal bank account of the claimant through RTGS within a period of one week thereon and the balance amount with interest and costs shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, at least for a period of six years. The claimant is permitted to withdraw interest accruing on such deposit once in a month.

16. Accordingly, C.M.A.No.2552 of 2019 is partly allowed and C.M.A.No.3263 of 2019 is dismissed, reducing the compensation amount from Rs.30,62,500/- to Rs.29,71,200/- with interest. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The III Judge,
Court of Small Causes,
Chennai 104.

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No. 75102

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No. 74365

C.M.A.Nos.2552 & 3263 of 2019

GP(CO)

GN(19/10/2020)

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