

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1302 of 2013

and

M.P.No.1 of 2013

(Through Video Conferencing)

M/s.Royal Sundaram Allianz Insurance Co.,Ltd.,
"Sundaram Towers",
45 & 46, Whites Road, Chennai. Appellant/II Respondent

Vs.

1.T.Prasath

2.E.Aruldasan

(R-2 set exparte in Lower Court)... Respondents/Petitioner/
1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 23.08.2012 made in M.C.O.P.No.579 of 2010 on the file of the Motor Accidents Claims Tribunal/Chief Judicial Magistrate at Perambalur.

For Appellant : M/s.R.Sree vidhya

For 1st Respondent : M/s.C.Sangamithirai

R2 : Exparte

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J U D G M E N T

The Insurance Company is the appellant. It is aggrieved by the impugned Judgment and Decree dated 23.08.2012 passed by the Motor Vehicles Accident Claims Tribunal, (Chief Judicial Magistrate), Perambalur in M.C.O.P.No.579 of 2010.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.8,47,070/- as compensation together with

interest at 7.5% p.a from the date of claim petition till the date of deposit and costs to the 1st respondent/claimant under the following heads:-

Heads	Amount
Loss of future earning capacity	Rs.6,12,000/-
Pain, Suffering & Trauma	Rs. 15,000/-
Transportation	Rs. 31,200/-
Medical Expenses	Rs.1,68,870/-
Extra-nourishment	Rs. 10,000/-
Loss of amenities & Loss of marriage prospectus	Rs. 10,000/-
Total	Rs.8,47,070/-

3. The learned counsel for the appellant Insurance Company submits that the application of multiplier for awarding compensation for the injuries suffered by the 1st respondent/claimant was not correct. It is therefore submitted that the compensation awarded to the 1st respondent/claimant was liable to be modified.

4. Heard the learned counsel for the appellant Insurance Company and the 1st respondent/claimant.

5. There is no dispute regarding the accident and the involvement of the insured vehicle. The dispute is confined only to quantum of compensation awarded by the Tribunal by taking the notional income of the 1st respondent/claimant as Rs.3,000/- since the 1st respondent/claimant was aged about 24 years and was a B.A student at the time of the accident. Considering the fact that the accident took place on 20.12.2009, I am inclined to confirm the notional income of Rs.3,000/- per month of the 1st respondent/claimant adopted by the Tribunal.

6. The Tribunal has accepted Ex.P16 Disability Certificate issued by the P.W.3 Dr.Sivaprasath and the Ex.P17 X-Ray. The operative portion of the impugned Judgment is reproduced below:-

It is proved that due to the said accident the petitioner had sustained grievous injury on his left forearm and multiple injuries all over the his body.

P.W.1 had deposed that in spite of the best treatment given to him he is unable to restore to a normal position. P.W.3 the Doctor who had issued the disability certificate Ex.P.16 based on Ex.P.17 X-ray had deposed that the petitioner had sustained 65% disability and that even after surgical treatment there is no improvement in the condition of the petitioner, since the vital nerves in the shoulder bone of the petitioner were totally damaged. The petitioner had stated that he was studying B.A. 2nd Year in Govt. College at Perambalur and due to the said injuries and disabilities the petitioner is not able to attend his avocation and any of his daily routine work as before. The age of the petitioner is stated as 24 years. The petitioner is incapacitated to pursue his chosen carrier thereby sustained loss of future earning capacity. On the side of the petitioner the following decisions are relied upon to assess the disability of the petitioner as 100% permanent disability and multiplier method to be adopted for fixing the quantum of compensation under the head of loss of future earning capacity.

7. Since the appellant Insurance Company has not effectively contradicted the above evidence recorded before the Tribunal, the same has to be accepted. However, there was no discussion in the impugned Judgment regarding the functional disability due to the above injuries suffered by the 1st respondent/claimant.

8. Considering the nature of injuries suffered by the 1st respondent/claimant, I am inclined to consider the functional disability of the 1st respondent/claimant due to the injuries suffered by him as 30% instead of 100%. The compensation awarded towards pain, suffering and trauma appears to be low and the same is enhanced to Rs.25,000/- from Rs.15,000/-. Similarly, the compensation awarded towards extra nourishment is also low and the same is enhanced to Rs.15,000/- from Rs.10,000/-. Accordingly, the compensation to be awarded to the 1st respondent/claimant is re-quantified as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343 as follows:-

9. It is informed by the learned counsel for the appellant Insurance Company that on 14.06.2013, at the time of the admission of this appeal, the appellant was directed to deposit the 50% of the award amount and the same was deposited by it.

10. Therefore, the appellant Insurance Company is directed deposit the above re-quantified amount of Rs.5,25,000/- together with interest at 7.5% p.a from the date of claim petition till the date of such deposit and costs, less any amount already deposited in terms of the order dated 14.06.2013 of this Court, within a period of six weeks from the date of receipt of a copy of this Judgment.

11. On such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal.

12. If the appellant Insurance Company has deposited any amount in excess of above re-quantified amount of compensation determined by this Court, it is permitted to withdraw the excess amount together with interest accrued thereon, by filing suitable applications before the Tribunal.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1.The Motor Vehicles Accident Claims
Tribunal/ Chief Judicial Magistrate,
Perambalur.

2.The Section Officer

VR Section, High Court, Madras.

+1 cc to M/s.C.Sangamithirai, Advocate Sr.No. 31174

C.M.A.No.1302 of 2013
and M.P.No.1 of 2013

RMP (29/04/2021)