

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1551 of 2013
and
MP.No.1 of 2013

Royal Sundaram Alliance Insurance Co. Ltd.,
No.21, Pattullos road,
Chennai - 600 002.

.... Appellant/ 2nd respondent
vs.

1.Kannappan
2.S.Srinivasan

...1st respondent/ Petitioner

...2nd Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 03.02.2012 in M.C.O.P.No.1829 of 2010 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.E.Rajadurai
for Mr.M.B.Gopalan

For Respondents: R1 - served, name printed - No appearance
R2 - Exparte

J U D G M E N T

The Royal Sundaram Alliance Insurance Company, the second respondent in MCOP.No.1829 of 2010 on the file of the Motor Accident Claims Tribunal, V Small Causes Court, Chennai has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 10.08.2008.

3. The case of the first respondent / claimant is that on 10.08.2008, at about 19.30 hours, he was travelling as a pillion rider in a motorcycle bearing Registration No.TN 09 AW 2112 along EC Road, Nallur, Kanchi District proceeding from Kadapakkam towards Villipakkam, Kanchi District. At that time, a car bearing Registration No.TN 10 P 5475 , driven by

its driver in a rash and negligent manner, hit the motorcycle, as a result of which, he fell down and sustained grievous injuries. According to the first respondent / claimant, the rash and negligent driving of the driver of the car was the cause of the accident. Therefore, he filed MCOP.No.1829 of 2010 seeking compensation for the injuries sustained by him.

4. The second respondent / owner of the car remained absent before the Tribunal and therefore, he was set exparte. The Royal Sundaram Alliance Insurance Company contested the claim petition. The learned V Judge / Motor Accident Claims Tribunal, Small Causes Court, Chennai after analysing the documents and evidences on record, awarded a compensation of Rs.3,40,500/- together with interest at the rate of 7.5% per annum to the first respondent / claimant. Challenging the said award dated 03.02.2012 made in M.C.O.P.No.1829 of 2010, the appellant / Insurance Company has filed the present appeal.

5. The learned counsel appearing for the appellant / Insurance Company contended that the Tribunal erred in fixing disability at 90% and awarding a sum of Rs.1,80,000/- towards permanent disability. He further submitted that in the absence of income proof, the Tribunal should not have awarded an excessive sum of Rs.50,000/- towards loss of earning capacity. He also prayed for reducing the award passed under other heads.

6. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record.

7. From the claim petition, it is seen that the first respondent / claimant was a labour aged 33 years, earning a sum of Rs.6,500/- per month. A perusal of disability certificate (Ex.P14), shows that he had suffered fracture of both bones right forearm and bimalleolur fracture of right ankle. It is also seen that surgeries were performed with rods and screws and implantations are still there. Dr.T.S.Kalkura (PW3) has deposed that he sustained fracture of right symphysin condylar, avulsion teeth and head injury. He had also deposed that ORIF was done and avulsion teeth replaced with prosthesis. Dr.K.J.Mathizhagan (PW2) and Dr.T.S.Kalkura (PW3) assessed the disability at 50% and 50% ie., in total 100%. However, the Tribunal reduced the same to 90% and awarded a sum of Rs.1,80,000/- (Rs.2,000/- per percentage of disability) towards permanent disability and the same is excessive and needs interference by this Court. Considering the nature of injuries sustained by him, the disability can be fixed only at 45% and since the accident is of the year 2008, a sum of Rs.2,000/- per percentage of disability can be awarded. Therefore, a sum of Rs.90,000/- is awarded towards permanent disability. Considering the year of the accident, Rs.4,000/- awarded by the Tribunal towards

transport to hospital is enhanced to Rs.5,000/-. Based on the nature of injuries, the Tribunal awarded Rs.5,000/- towards extra nourishment and attender's charges each and they are hereby confirmed. The Tribunal also rightly fixed the income as Rs.4,500/- per month and awarded Rs.18,000/- towards loss of income for four months and it is hereby confirmed. Dr.K.J.Mathizhagan (PW2) had deposed that the injured can do the work with some difficulties. In such circumstances, Rs.50,000/- awarded by the Tribunal towards loss of earning capacity is vacated. Based on the pay ward receipts (Ex.P7), medical bills (Ex.P9) and CT scan receipt (Ex.P13), the Tribunal awarded a sum of Rs.13,033/- towards medical expenses and it is also hereby confirmed. The Tribunal awarded Rs.15,000/- towards future medical expenses. However, a perusal of future medical expenses certificate (Ex.P11) shows that the first respondent / claimant would incur an expenditure of Rs.30,000/- for removal of implants in the future and therefore, Rs.30,000/- is awarded towards future medical expenses. Considering the nature of injuries sustained by him, a sum of Rs.50,000/- awarded towards pain and sufferings can be reduced to Rs.30,000/-. This Court is of the view that, this is a fit case for awarding some amount under the head loss of amenities and therefore, a sum of Rs.25,000/- is awarded towards the same.

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1	Permanent disability	1,80,000	90,000
2	Loss of income	18,000	18,000
3	Medical expenses	13,033	13,033
4	Transport to hospital	4,000	5,000
5	Extra nourishment	5,000	5,000
6	Attender's charges	5,000	5,000
7	Future medical expenses	15,000	30,000
8	Pain and sufferings	50,000	30,000
9	Loss of earning capacity	50,000	nil
10	Loss of amenities	Nil	25,000
	Total	Rs.3,40,033/- Rounded off to Rs.3,40,500/-	Rs.2,21,033/-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,40,500/- is hereby reduced to Rs.2,21,033/- 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, to the credit of MCOP.No.1829 of 2010 on the file of the Motor Accident Claims Tribunal / V Judge, Court of Small Causes, Chennai within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent / claimant is permitted to withdraw the modified award amount along with interest and costs, less the amount if any, already withdrawn. The appellant / Insurance Company is permitted to withdraw the excess amount, lying in the deposit to the credit of MCOP.No.1829 of 2010, if the award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO MDU)

//True Copy//

Sub Assistant Registrar

mbi

To

1.The Motor Accidents Claims Tribunal,
V Court of Small Causes,
Chennai.

Copy to:

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

+1cc to Mr.M.B.Gopalan , Advocate SR.No. 9153

C.M.A.No.1551 of 2013

and

MP.No.1 of 2013

A.SK(02/09/2020)

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