

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.08.2020
CORAM:
THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE
C.M.A.No.1626 of 2013

The New India Assurance Co.Ltd.,
No.21, Pattulos Road, Chennai - 2.

...2nd Respondent/
Appellant

vs.

1.G.Suresh

2.M.Shanmugam
(2nd respondent set exparte)

...1st Respondent/
Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P. No.3109 of 2007 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes) at Chennai dated 16.08.2011.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : R2 - Exparte
Ms.Ramya V.Rao for R1

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 16.08.2011, passed by the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes), Chennai in MACT O.P.No. 3109 of 2007.

2. Heard Mr.M.Krishnamoorthy, learned counsel for the Appellant and Ms.Ramya V.Rao, learned counsel for the first respondent. The second respondent remained exparte both before the Tribunal as well as this Court.

3. The first respondent sustained injuries on 15.08.2007, as a result of an accident caused by a vehicle owned by second respondent and insured with the Appellant. He preferred a claim before the Motor Accident Claims Tribunal in MACT O.P.No. 3109 of 2007 seeking compensation. The Motor Accident Claims Tribunal

under the impugned Award directed the Appellant/Insurance Company to pay the first respondent/claimant a compensation of Rs. 4,59,600/- together with interest and cost as detailed hereunder:

Loss of Income	-	Rs.30,000/-
Transport to Hospital	-	Rs.5,000/-
Extra nourishment	-	Rs.10,000/-
Medical expenses	-	Rs.2,600/-
Attender Charges	-	Rs.10,000/-
Pain and Sufferings	-	Rs.45,000/-
Permanent Disability	-	Rs.3,57,000/-
Total	-----	Rs.4,59,600/-

4. The Appellant/Insurance Company has challenged the Award on the ground that the quantum of compensation awarded by Tribunal under the impugned Award is excessive. It is their case that the Tribunal has erroneously assessed whole body disability to the first respondent/claimant at 35% which according to them is on the higher side. It is also their contention that the notional monthly income of the first respondent/claimant fixed by the Tribunal at Rs.5,000/- is also on the higher side. They have also questioned the quantum of compensation awarded by the Tribunal under various other heads also.

5. Before the Tribunal the first respondent/claimant has filed eleven documents which were marked as Exs.P1 to P11 and two witnesses were also examined namely the first respondent/claimant himself as PW1 and the Doctor, who examined him as PW2. On the side of the Appellant/Insurance Company neither any document was filed nor any witness examined before the Tribunal.

6. In the claim petition, the first respondent/claimant has pleaded that he was employed as a Kitchen Supervisor at Hotel Checkers, Chennai - 600 015 and was earning a monthly income of Rs. 5,000/- and he was aged 31 years at the time of the accident. The avocation of the first respondent/claimant has not been disputed by the Appellant/Insurance Company, as seen from the evidence available on record. However, as per the discharge summary, the age of the first respondent/claimant is 32 years at the time of the accident and the Tribunal has accepted the same

to be correct. The year of the accident is 2007 and considering the fact that the first respondent was employed in a Hotel, he would have definitely earned Rs.5,000/- in the year 2007. The Tribunal has rightly accepted the pleading of the first respondent in his Claim Petition and assessed the monthly income of the first respondent at Rs.5,000/-.

7. The disability certificate issued by the Doctor (PW2), states that the first respondent/claimant has suffered 55% of disability. However, the Tribunal has assessed whole body disability of the first respondent at 35% which in the considered view of this Court is not a correct assessment. The first respondent/claimant has sustained Head Injury, Contusion over Right shoulder, Right elbow, Laceration over Right axilla, avulsion injury over the medial aspect of Right arm, wound over Right Chest and multiple injuries all over the body. As seen from the injuries, the first respondent/claimant has not sustained any fracture. However considering the fact that he has sustained head injury as well as the injuries all over his body, the Tribunal was right in adopting the multiplier method while assessing the compensation towards permanent disability to the first respondent/claimant. But since the first respondent has not sustained any fracture, the Tribunal ought not have assessed the whole body disability at 35% which is on the higher side that too when no sufficient evidence has been produced by the first respondent/claimant before the Tribunal for such an assessment.

8. This Court after giving due consideration to the nature of injuries sustained by the first respondent/claimant and his period of hospitalization i.e., six (6) days, the correct whole body assessment with regard to the first respondent/claimant's disability will be 20%. Since the age of the first respondent/claimant is 32 years at the time of the accident, the Tribunal has rightly applied 17 multiplier. If 20% disability is fixed, the compensation payable to the first respondent/claimant towards his loss of earning power will be Rs, 2,04,000/- as detailed below:

$$5000 \times 12 \times 17 \times 20\% = 2,04,000/-$$

Therefore, the compensation towards Permanent disability fixed by the Tribunal at Rs. 3,57,000/- is reduced to Rs. 2,04,000/- by this Court.

9. The Tribunal has awarded Rs.5,000/- towards transportation cost and Rs.10,000/- towards extra nourishment which in the considered view of this Court is a correct assessment. The Tribunal has awarded a compensation of Rs.

30,000/- towards loss of income which in the considered view of this Court is on the higher side. After giving due consideration to the nature of injuries sustained by the first respondent, he would have been unable to do his regular work as a Kitchen Supervisor in a Hotel for a period of four (4) months. But, however, the Tribunal has awarded compensation towards loss of income on the basis that the first respondent/claimant would have been unable to do his regular work for a period of six (6) months. Accordingly, the compensation towards loss of income awarded to the first respondent during the period of treatment is reduced to Rs. 20,000/- instead of Rs. 30,000/- fixed by the Tribunal.

10. The Tribunal has awarded Rs. 2,600/- as compensation to the first respondent towards Medical Expenses which is rounded off to Rs.3,000/- by this Court.

11. Insofar as the compensation awarded by the Tribunal under the heads of Attender Charges at Rs.10,000/- and pain and suffering Rs. 45,000/- are concerned, the same will also need to be reduced to Rs.8,000/- and Rs.15,000/- respectively by this Court, since it is disproportionate to the nature of injuries sustained by the first respondent.

12. The Tribunal has failed to Award any compensation towards loss of amenities to the first respondent/claimant which he is legally entitled to as per the settled practice. This Court after giving due consideration to the nature of injuries sustained by the first respondent/claimant and his avocation, awards compensation of Rs. 10,000/- towards loss of amenities.

13. For the forgoing reasons, the compensation awarded by the Tribunal is reduced to 2,75,000/- from 4,59,600/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of income	30,000/-	20,000/-
Transport to hospital	5,000/-	5,000/-
Extra nourishment	10,000/-	10,000/-
Medical expenses	2,600/-	3,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Attender charges	10,000/-	8,000/-
Pain and suffering	45,000/-	15,000/-
Permanent disability	3,57,000/-	2,04,000/-
Loss of amenities	-	10,000/-
Total	4,59,600/-	2,75,000/-

14. In the result, this Appeal is partly allowed by reducing the compensation from 4,59,600/- to 2,75,000/-. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The Appellant is directed to deposit the modified award amount of Rs.2,75,000/- together with interest from the date of claim till the date of realisation, after deducting the amount already deposited, if any, to the credit of MACT O.P.No.3109 of 2007 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest directly to the bank account of the first respondent /claimant, through RTGS, within a period of two weeks thereafter. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Motor Accident Claims Tribunal,
IV Judge, Court of Small Causes,
Chennai.
2. The Section Officer,
Vernacular Section,
Madras High Court.

C.M.A.No.1626 of 2013

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