IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.26.08.2020

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.1713 of 2013 &
M.P.No.1 of 2013

The National Insurance Company Limited,
Division No.10, Float No.101-106, B.M.C. House,
Cannaught Palace,
New Delhi. ... Appellant/2nd Respondent

vs.

1.Jawahar ...1st Respondent/Claimant
2.Singaravel
3.K.Pazhaniswamy
4.M/s.ICICI Lombard General Insurance Company Limited,
Jenith house,
Keshavarao Khade Marg,
Mahalakshmi,
Mumbai - 400034
... 2 to 4th Respondents/
1,3 & 4th Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree passed in MACTOP.No.796 of 2008 dated 20.02.2012 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Sangagiri.

For Appellant : Mrs.N.B.Surekha

For Respondents : Mr.R.Maruthachalamoorthy for R1
No appearance for R2, R3 & R4

JUDGMENT

[This Appeal has been taken up for hearing through Video Conferencing]

This appeal has been filed by the Appellant Insurance company challenging the award dated 20.02.2012 passed by the Motor Accident Claims Tribunal (Subordinate Court, Sangagiri) in MCOP.No.796 of 2008.

2. Heard Mrs.N.B.Surekha, learned counsel for the Appellant, Mr.R.Maruthachalamoorthy, learned counsel for the first respondent. Despite service of notice on the respondents 2, 3 & 4, there is no representation on their side.

3. The Appellant/insurance company has challenged the adverse finding of negligence against the driver of the insured Maruti Omni Van and they have also challenged the quantum of compensation awarded by the Tribunal.

4. The details of the compensation awarded by the Tribunal under the impugned award is detailed hereunder:

Heads	Amount Awarded by the Tribunal (Rs.)
Loss of earning power	5,30,400/- (7500 -1/3 = 5000 x 68% x 12 x 13)
Pain and suffering	25,000/-
Transportation	5,000/-
Extranourishment	20,000/-
Loss of amenities	5,000/-
Attender charges	5,000/-
Medical Expenses	2,60,800/-
Total	8,51,200/-

5. Before the Tribunal, the first respondent/claimant has filed ten documents which were marked as Ex.A1 to Ex.A10 and three witness were examined on his side namely, the first respondent/claimant himself as PW1, an Eye Doctor as PW2 and an Ortho Doctor as Pw3. On the side of the Appellant/Insurance Company, they have filed one document which was marked as Ex.R1-insurance policy and they have examined two witnesses namely insurance company official as RW1 and the driver of the insured Omni Van as RW2.

6. The contention of the Appellant before this Court is that two vehicles were involved in the accident which resulted in the first respondent/claimant sustaining injuries on 19.11.2008. According to them, the driver of the lorry which was coming from the opposite direction was alone responsible for the cause of the accident as it only collided against the Omni van insured

with the Appellant. It is also their case that the quantum of compensation awarded by the Tribunal to the first respondent/claimant is excessive.

7. Insofar as the first contention raised by the Appellant/insurance company is concerned, FIR has been registered only against the driver of the Omni Van. Eventhough the Appellant insurance company has contended before the Tribunal that the complaint has been lodged by the driver of the lorry against the insured Omni Van and therefore, that cannot be relied upon, the Tribunal has rejected the contention on the ground that the driver of the insured Omni Van has himself pleaded guilty before the Criminal Court and paid fine for his rash and negligent driving of the Omni Van. RW2, the driver of the Omni Van (insured vehicle) has admitted during his cross examination that he overtook a share auto and the lorry coming from the opposite direction had collided with the Omni Van. As seen from the oral evidence of the driver of the insured Omni Van, it is clear that only due to the rash and negligent driving by the driver of the Omni Van (insured vehicle), the accident happened. As observed earlier, FIR has also been registered only against the driver of Omni Van and the driver of Omni Van has himself pleaded guilty before the Criminal Court and paid fine. The Criminal Court Judgment passed against the driver of the insured Omni Van has also been marked as Ex.A5, before the Tribunal. Any adjudication before the Motor Accident Claims Tribunal is done based on preponderance of probability. In the case on hand, the preponderance of probabilities will conclusively establish that the driver of the insured Omni Van is alone responsible for the cause of the accident. The Tribunal has rightly considered the evidence available on record and has rightly rejected the contention of the Appellant. This Court does not find any infirmity in the said finding of the Tribunal.

8. Insofar as the second contention raised by the Appellant with regard to the quantum of compensation awarded by the Tribunal is concerned, this Court has perused the materials and evidence available on record before the Tribunal.

9. The first respondent/claimant has sustained the following injuries namely (a) injury in the right eye and (b) both bone fracture in the left leg. Eye Doctor, PW2 has assessed the disability of the eye of the first respondent/claimant at 30% and the Ortho Doctor, Pw3 has assessed the disability of the first respondent/claimant at 58%. The Tribunal has however assessed the whole body disability of the first respondent/claimant at 68% which in the considered view of this Court is on the higher side. Before the Tribunal, the first respondent/claimant has not placed sufficient evidence to show that he would have suffered 68% whole body disability as

assessed by the Tribunal. This Court after giving due consideration to the nature of injuries sustained by the first respondent/claimant is of the considered view that it will be a correct assessment if the whole body disability of the first respondent/claimant is fixed at 40%.

10. The first respondent/claimant in his claim petition has pleaded that he was a marriage organiser and he was also doing agricultural operations and was earning Rs.15,000/- per month. However, no documentary evidence was placed by the first respondent/claimant before the Tribunal to substantiate his monthly income. Since no documentary evidence was produced by the first respondent/claimant, the Tribunal fixed his monthly income on notional basis at Rs.7,500/- which in the considered view of this Court is on the higher side. This Court after considering the year of the accident assesses the notional monthly income of the first respondent/claimant at Rs.6,500/- in accordance with the settled practice for the said year. The Tribunal has deducted 1/3rd towards the personal expenses of the first respondent/claimant which in the considered view of this court is an erroneous finding, in view of the fact that it is an injury claim and hence, the said finding is set aside. The first respondent/claimant was aged 48 years at the time of the accident and considering the same, the Tribunal has rightly adopted 13 multiplier for assessing the compensation payable to the first respondent/claimant towards loss of earning power by adopting multiplier method.

11. For the foregoing reasons, compensation towards loss of earning power is reduced to Rs.4,05,600 (6,500 x 40% x 12 x 13) from Rs.5,30,400/- fixed by the Tribunal. Insofar as the compensation awarded by the Tribunal under the heads pain and suffering at Rs.25,000/- and medical expenses at Rs.2,60,800/- is concerned, the same is a just compensation and there is no scope for interference by this Court.

12. However, the compensation awarded by the Tribunal under the heads Transportation at Rs.5,000, Loss of amenities at Rs.5,000/- and Attender charges at Rs.5,000/- is low and not in accordance with settled practice for an accident of the year 2008 and it has to be enhanced to Rs.10,000, Rs.15,000 and Rs.15,000/- respectively by this Court.

13. However, the Tribunal has awarded a higher compensation towards extra nourishment charges at Rs.20,000/- which has to be reduced by this Court. Accordingly, the compensation towards extra nourishment is reduced to Rs.10,000/- from 20,000/- by this Court.

14. For the foregoing reasons, the compensation awarded by the Tribunal is reduced to Rs.7,42,000 from Rs.8,51,200/- by this Court in the following manner:

Heads	Amount Awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earning power	5,30,400/- (7500 -1/3 = 5000 x 68% x 12 x 13)	4,05,600/- (6500 x 40% x 12 x 13)
Pain and suffering	25,000/-	25,000/-
Transportation	5,000/-	10,000/-
Extranourishment	20,000/-	10,000/-
Loss of amenities	5,000/-	15,000/-
Attender charges	5,000/-	15,000/-
Medical Expenses	2,60,800/-	2,60,800/-
Total	8,51,200/-	7,41,400/-
Rounded off	8,51,200/-	7,42,000/-

Conclusion:

15. In the result, this appeal is partly allowed by reducing the compensation awarded by the Tribunal from Rs.8,51,200/- to Rs.7,42,000/-. However, the rate of interest fixed by theTribunal at 7.5% is confirmed. The Appellant insurance company is directed to deposit the award amount along with interest from the date of claim till the date of deposit and costs after deducting the amount already deposited if any to the credit of MCOP.No.796 of 2008 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 lying to the credit of MCOP.No.796 of 2008 to the bank account of the first respondent/claimant within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Sangagiri.

Copy to

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

+1cc to Mrs.N.B.Surekha, Advocate Sr.28175
+1cc to Mr.R.Maruthachalamurthy, Advocate Sr.27930

C.M.A.No.1713 of 2013

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srg 30/04/2021