

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.08.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.1740 of 2016
and C.M.P.No.13072 of 2016

Royal Sundaram Alliance Insurance Company Limited,
Mangalam Buildings, Opposite to Samundi Super Market,
Four Roads, Omalur Main Road,
Salem - 636 009.Appellant/2nd Respondent

/versus/

1. A. Senthil,
S/o.Arunchalam,
Alagapuram Periya Pudur,
Near Periya Koil, Salem - 636 016.
....1st Respondent/1st Respondent

2. K.Srinivasan,
S/o.Krishnan,
Biramanar Street, Mariyur, Madurantakam,
Kancheepuram District, Tamil Nadu.
...2nd Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.1776 of 2010, on the file of the Motor Accidents Claims Tribunal (Special Sub Judge No.2) at Salem, dated 28.08.2015.

For Appellant : Mr.M.Krishnamoorthy
For R1 : Ms.Rajalakshmi,
for Mr.M.R.Kuyilan
For R2 : exparte

J U D G M E N T
(The case has been heard through video conference)

Heard the Learned Counsel for the Appellant and Learned Counsel for the 1st Respondent.

2. This appeal is by Insurance Company questioning the quantum of compensation awarded by the Tribunal to the claimant

who has suffered grievous injury in the motor accident on 20.01.2010.

3. The short facts of the case is that, the claimant while driving his two wheeler, was hit by a Bolero car driven rash and negligently. In the said accident, the claimant sustained fracture on spinal cord, neck and lower limb. He was taken to the hospital for treatment and was treated as inpatient for a month. He has sustained dislocation of D-12 vertebra, fracture of tibia and fibula of left leg and right scapula. The doctor who has examined him, given disability certificate indicating the claimant has sustained 90% permanent disability.

4. Based on the disability certificate Ex.P.16 and other evidence indicating the injury sustained by the claimant and medical expenses met out by him which has immobilised the victim from carrying day today life, the Tribunal has fixed the monthly income of the claimant as Rs.4,500/- added 50% towards the future prospects and applying multiplier 18 based on age and fixing the disability as 90% and awarded total sum of Rs.23,87,000/- for the loss under the conventional and non-conventional heads.

5. The present appeal is filed by the Insurance Company on specific grounds.

(i). The percentage of disability is highly excessive and the Tribunal has not properly considered the nature of injury sustained by the accident victim.

(ii). The fixation of 50% for future prospect is contra to the guidelines laid down by Pranay Sethi case.

6. After awarding adequate compensation under the loss of future income, the Tribunal ought not to have given compensation under the head of permanent disability. Awarding Rs.1,00,000/- for permanent disability and also applying multiplier is exorbitant and erroneous.

7. The Learned Counsel for the appellant would also point out that after applying the multiplier of 18, the Tribunal has taken 20 years at the rate of Rs.1,500/- per month and awarded Rs.3,60,000/- towards attender charges.

8. It is also pointed out by the Learned Counsel for the appellant that the award of Rs.1,50,000/- each towards pain and sufferings and loss of amenities is only duplication of the award granted under the loss of future income and permanent disability.

9. The Learned Counsel appearing for the respondent/claimant would submit that the award of the Tribunal

though may be in variation to certain standard formula adopted by the Courts, the total sum awarded is fair unjust for the nature of injury sustained by 24 years old boy, who lost his future due to the accident.

10. After perusal of the records and on hearing the rival submissions, this Court is of the view that except fixation of 50% towards the future prospects instead of 40% and calculating the attender charge for 20 years instead of 18 years No serious error in the award. There are some marginal error in the award under non conventional head, but those heads need not be inferred. Hence, the award of the Tribunal is modified as follows:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of future Income	13,12,200	12,24,720 (6300x12x18x9 0%)	Reduced
2.	Attender charge	3,60,000	3,24,000	Reduced
3.	Permanent disability	1,00,000	1,00,000	confirmed
4.	Pain and sufferings	1,50,000	1,50,000	confirmed
5.	Loss of amenities	1,50,000	1,00,000	Reduced
6.	Medical expenses	1,68,400	1,68,400	Confirmed
7.	Transport charges	25,000	25,000	Confirmed
8.	Extra nourishment	25,000	25,000	Confirmed
9.	Damage to clothing	1,400	1,400	Confirmed
10.	Future medical expenses	50,000	50,000	Confirmed
11.	Loss of income for ten months	45,000	45,000	Confirmed

	Total	23,87,000	22,13,520	Reduced by Rs.1,72,480/-
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11. After modification, the compensation awarded for the claimant is Rs.22,13,520/-, with interest at the rate of 7.5% per annum from the date (28.07.2010 to 08.11.2012) and from 23.01.2015 till the date of deposit.

12. The Learned Counsel for the appellant reports that the entire award amount has already been deposited. If it is so, the respondent/claimant is entitled to withdraw the money as per the award passed in the appeal and any money lay in excess, the Insurance Company is permitted to take refund of the same. Accordingly, the Civil Miscellaneous Appeal is partly-allowed. Consequently, the connected civil miscellaneous petition is also closed. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

bsm
To

1.The Motor Accidents Claims Tribunal,
Special Subordinate Judge No.2, Salem

2.The Section Officer, V.R.Section,
High Court, Madras.

C.M.A.No.1740 of 2016
and C.M.P.No.13072 of 2016

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AK(CO)
SP(21/04/2021)

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