

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3710 of 2012
and M.P.No.1 of 2012

(Through Video Conferencing)

Royal Sundaram Alliance
Insurance Company Limited,
No.45 and 46, Whites Road,
Chennai 600 014. Appellant/2nd Respondent

vs.

1.S.Gnana Soundari
2.M.Saravanan
(2nd Respondent set exparte before
the lower court) ... Respondents/Claimant and 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1674 of 2010, dated 22.08.2012 on the file of the Motor Accidents Claims Tribunal (III Judge, I/c II Judge, Small Cause Court) Chennai.

For Appellant : Mrs.R.Sreevidhya

For R1 : M/s.C & K.Law Airm

R2 : Exparte

J U D G M E N T

The Insurance company is the appellant and is aggrieved by the impugned Judgment and decree dated 22.08.2012 passed by the Motor Accidents Claims Tribunal, (III Judge, I/c II Judge, Small Causer Court) Chennai in M.C.O.P.No.1674 of 2010.

2. By the impugned order, the Tribunal has awarded a sum of Rs.4,56,200/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the st respondent-claimant .

3. The facts of the case are that the 1st respondent/claimant met with an accident on 17.04.2010 at about 21.15 hours. The accident is said to have taken place while the 1st respondent/claimant was travelling on a scooter motor cycle bearing Reg.No.TN-07-AK-7304, near Prince Info City, IT Park, Rajiv Gandhi Salai. It was alleged that the insured lorry bearing Reg.No.TtN-03-A-3245 belonging to the 2nd respondent insured with the appellant Insurance Company allegedly driven in a rash and negligent manner knocked down the 1st respondent/claimant. It was further alleged that as a result of the accident, the 1st respondent/claimant suffered grievous injuries.

4. The learned counsel for the appellant-Insurance company admits to the accident and the nature of injury suffered by the 1st respondent. However, he questions the amount of compensation awarded by the Tribunal on the ground that P.W.2 who deposed the evidence and gave a disability certificate to the 1st respondent/claimant was unreliable as the disability certificate was unreliable as the disability certificate exaggerated and despite the same, the Tribunal has considered 30% disability for the purpose of compensation. He further submits that the Tribunal erred in adopting multiplier while determining compensation. He further submits that the compensation awarded to the 1st respondent may be therefore reduced. He also submits that the Tribunal ought to have awarded only just compensation to the 1st respondent for the injury suffered. He submits that the amount of compensation of Rs.3,67,200/- may be reduced to Rs.1,18,000/- .

5. Per contra, the learned counsel for the 1st respondent-claimant submits that the order of the Tribunal was well reasoned and requires no interference and hence he prayed for dismissal of the present appeal.

6. I have considered the arguments advanced on behalf of the learned counsel for the appellant and the 1st respondent.

7. The 1st respondent/claimant had produced the discharge summaries vide Exs.P2 and P.3. Apart from the same, P.W.2 Physician (Doctor) who deposed that the 1st respondent/claimant suffered partial permanent disability and assessed the same as 60%. The Tribunal has considered 30% disability for the purpose of awarding compensation towards loss of income due to the partial permanent disability and has awarded a sum of Rs.3,67,200/- towards loss of income to the claimant.

8. The Hon'ble Supreme Court has also recognised the adoption of multiplier method for awarding compensation in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 in case of permanent disability or partial permanent disability.

9. In para Nos.12 and 13, the Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343 has explained the modalities for determining the compensation. These paragraphs are reproduced below:-

"12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:-

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding

compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or

(ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or

(iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

10. In the present case, the nature of injuries suffered by the 1st respondent-claimant are grievous in nature but did not result any kind of permanent disability to award compensation by applying multiplier.

11. Considering the fact that the first respondent was aged about 32 years at the time of accident and considering the fact that the deformed muscles were cut twice and the skin graft was operated due to the injury suffered by the 1st respondent, I am inclined to partially reduce the amount of compensation awarded to substitute the same to Rs.1,80,000/-

12. The Tribunal has however also awarded meagre a sum of Rs.10,000/- towards pain and suffering. Since same shall be enhanced to Rs.50,000/- under the same head, the 1st respondent-claimant had undergone surgery on both his legs. For the same reason, a sum of Rs.5,000/- awarded by the Tribunal under the head of attender charges, is hereby enhanced to Rs.15,000/- . Therefore, the amount of compensation is re-quantified as follows:

Heads	Amount awarded by this Court
Loss of income for 3 months	Rs. 18,000/-
Transportation	Rs. 10,000/-
Extra nourishment	Rs. 10,000/-

Damage to clothes	Rs. 1,000/-
Medical Expenses	Rs. 25,000/-
Attender charges	Rs. 15,000/-
Loss of amenities and mental agony	Rs. 10,000/-
Pain and sufferings	Rs. 50,000/-
Disability and loss of earning power	Rs. 1,80,000/-
Total	Rs. 3,19,000/-

13. Therefore, the appellant-Insurance Company is directed to deposit the above re-quantified amount of compensation of Rs.3,19,000/- together with interest at 7.5 % and proportionate costs, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

14. 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.

15. 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 application before the Tribunal.

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

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Assistant Registrar(CO)

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Sub Assistant Registrar

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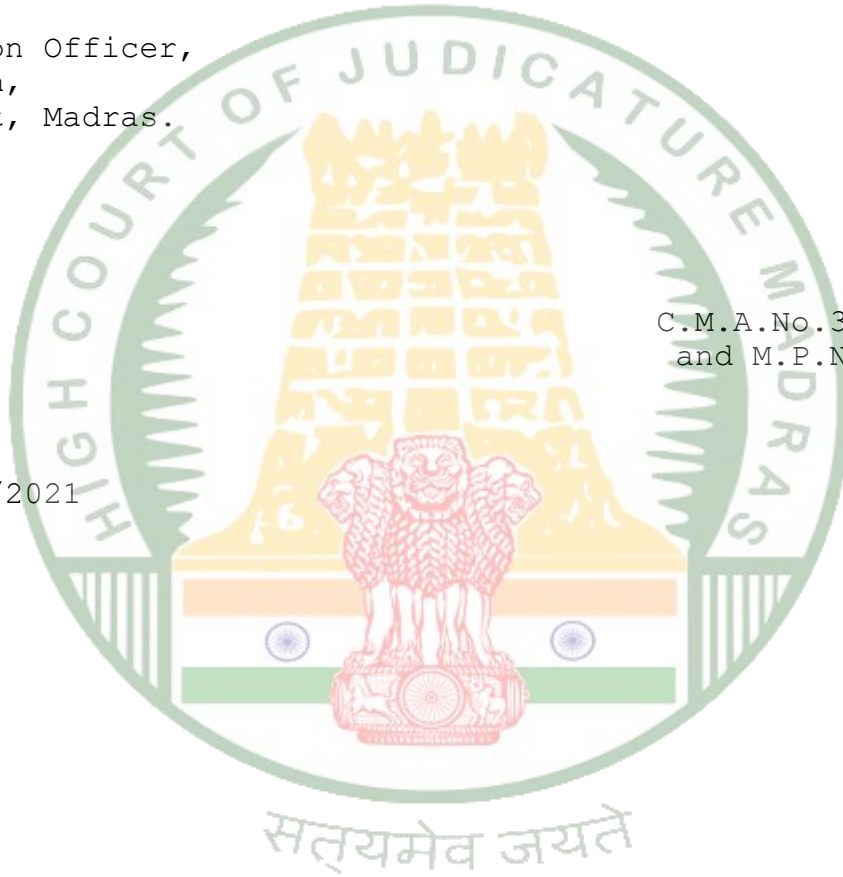
The Motor Accidents Claims Tribunal,
(III Judge, I/c II Judge, Small Cause Court)
Chennai.

Copy to

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

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