



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.12.2020

Pronounced on: 14.12.2020

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THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.Nos.648 & 1436 of 2015
& C.M.P.No.1 of 2015

The Oriental Insurance Company Limited,
No.A-13, 2nd Anevnue Anna Naga East, Chennai.
... Appellant/2nd Respondent
in C.M.A.No.648 of 2015

P.Janakiraman,
S/o.Panchaiappan,
No.1, Venkatesapuram 3rd Street,
Triplicane,
Chennai - 05. ... Appellant/Petitioner
in C.M.A.No.1436 of 2015

/versus/

1. P.Janakiraman,
S/o.Pachaiappan,
Triplicane, Chennai - 600 005. ...1st Respondent/Petitioner
2. Aseerwath Enterprises,
P.48, 6th Street, Anna Nagar,
Chennai - 600 040. ...2nd Respondent/1st Respondent
1. Aseerwath Enterprises,
P.48, 6th Street, Anna Nagar,
Chennai - 40.
2. The Oriental Insurance Company Limited,
A. 13, 2nd Avenue, Anna Nagar East,
Chennai. ... Respondents/Respondents
in C.M.A.No.1436 of 2015

Prayer in C.M.A.No.648 of 2015: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.1998 of 2012 on the file of the Motor Accidents Claims Tribunal (IV Judge, Court of Small Causes), at Chennai, dated 23.12.2014.

Prayer in C.M.A.No.1436 of 2015:- Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the



judgment and decree dated 23.12.2014 made in M.C.O.P.No.1998 of 2012 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai.

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For Appellant : Mr.M.Krishnamurthy
in C.M.A.No.648 of 2015

For R2 : Mr.M.Krishnamurthy
in C.M.A.No.1436 of 2015

For R1 : Mr.Varadha Kamaraj
in C.M.A.No.648 of 2015

For 1st Appellant : Mr.Varadha Kamaraj
in C.M.A.No.1436 of 2015

For R2 : ex parte
in C.M.A.No.648 of 2015

For R1 : ex parte
in C.M.A.No.1436 of 2015

COMMON JUDGMENT

(The case has been heard through video conference)

These two Civil Miscellaneous Appeals filed under section 173 of the Motor Vehicles Act, 1988, is against the award passed in M.C.O.P.No.1998 of 2012 by the Motor Accident Claims Tribunal, Chennai, C.M.A.No.648 of 2015 is by the Insurance Company alleging that the quantum of compensation awarded is exorbitant and excessive. C.M.A.No.1436 of 2015 by the claimant seeking for enhancement of compensation.

2. The facts of the case is that, on 05.08.2006 at about 17.00 hrs, while the claimant P.Janakiraman was travelling in a load auto bearing Registration No.TN-02-S-3096 as a water can delivery boy, proceeding from South to North at the junction of Kodambakkam High Road and Nugambakkam High Road, the auto driver suddenly turned to East rash and negligently. Due to his negligent driving the auto capsized. The claimant sustained grievous injuries and got admitted in the hospital and took treatment for 12 days as inpatient for his fracture at II, III, IV, V left hand finger, left wrist and multiple injuries all over the property.

3. A Claim petition for compensation of Rs.10,00,000/- filed against the owner of the auto for being vicariously liable for the negligent Act of his driver and the insurer of the auto.



4. The Tribunal, after examination of witnesses P.W-1 (claimant) and P.W-2 (doctor) and on perusal of the documents marked as Ex.P-1 to Ex.P-10, awarded compensation of Rs.8,16,000/- with 7.5% interest, from the date of claim petition (22.03.2012) till the date of realisation.

5. The break up details for the compensation arrived by the Tribunal is as under:-

Sl.Nos .	Compensation under various heads	Award passed by the Tribunal
1.	Disability	Rs.1,35,000.00
2.	Pain and suffering	Rs.1,00,000.00
3.	Extra nourishment	Rs.1,00,000.00
4.	Transport to Hospital	Rs.75,000.00
5.	Damages to clothes	Rs.3,000.00
6.	Attender Charges	Rs.50,000.00
7.	Loss of earning	Rs.78,000.00
8.	Medical Expenses	Rs.25,000.00
9.	Loss of amenities	Rs.50,000.00
10.	Loss of Future prospects	Rs.1,00,000.00
11.	Loss of marital prospects	Rs.1,00,000.00
	Total	Rs.8,16,000.00

6. In C.M.A.No.648 of 2015, the Insurance Company pointing the assessment of disability by P.W-2 is not based on the medical guidelines and the disability certificate does not accompanied with the working sheet, questioned the assessment of 45% disability. Further, pointing out that, the accident took place in the year 2006 and the claim petition was filed after 6 years, the Tribunal without taking note of the date of accident, had awarded Rs.3,000/- per percentage of physical disability. Besides, when the treatment period was only 12 days, the Tribunal erred in awarding Rs.1,00,000/- for pain and suffering and Rs.78,000/- for loss of income during the treatment period. Without any evidence and claim, the Tribunal has awarded Rs.1,00,000/- each under the head future prospect and marriage prospect.

7. In C.M.A.No.1436 of 2015, the claimant has stated that, the award on the different heads ought have been more and the compensation for the disability ought to have computed at 50% instead of 45%. The Tribunal failed to note that the



disability has caused complete loss of use of the left hand and therefore, it should have applied multiplier method to arrive the loss of earning capacity. The claimant was delivery boy earning Rs.200/- per day. Due to the fracture of his left hand fingers and wrist, he is not able to use his left hand for lifting the water can. The injury has caused permanent total disability to his earning capacity. Therefore, the multiplier method for the loss of income should be applied. The loss of use is 100%, hence the compensation to be enhanced accordingly.

8. Heard the Learned Counsels and records perused.

9. The submissions of the respective Counsels are substantially correct and undoubtedly, the Tribunal has not properly assessed the quantum of compensation. The disability suffered by the claimant is assessed by P.W-2 as 50% partial permanent disability. The disability certificate Ex.P-10 is not accompanied with working sheet. P.W-2 in his disability certificate has opined "Deformity and disfigurement of left hand. Contracture of all muscles. All fingers and wrist movements restricted. Difficulty in lifting or holding any objects."

10. This injury is neither a total disability or sufficient to consider that this has caused complete loss of use of the limb. However, taking into the nature of the claimant avocation, the restricted movement of his limb and difficulty in lifting or holding any objects should to considered as partial permanent disability impairing his earning capacity. The doctor has opined that the injury has caused 50% partial disability of the part of the body (one limb). The restriction in the movement of his left hand shall cause 15% of loss in his earning capacity. The claimant was 28 years at the time of accident and earning his livelihood as a delivery boy. He claims that, his daily income was Rs.200/-. At this juncture, it is to be noted, the Tribunal strangely after observing that, the claimant has not filed any proof for his income of Rs.200/- per day, had fixed the monthly income notionally at Rs.6,500/ which is more and above the claimant's plea. By fixing income notionally more and above, the claim despite recording there is no evidence, the perversity in the Tribunal award is manifested.

11. The accident occurred on 05.06.2006, so the notional income of the claimant is fixed at Rs.4,500/- per month. His age at the time of accident was 28 years. Hence, 40% is added to his notational income for future prospect. The loss of earning capacity is fixed at 15% and the total loss of earning capacity is computed as $(Rs.4,500 + Rs.1800) \times 15/100 \times 17 \times 12 = 1,92,780/-$. Thus, the compensation is modified and re-fixed as below:-



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Sl.No s.	Compensation under various heads	Award passed by this Court
1.	Loss of earning capacity	Rs.1,92,780/-
2.	Pain and sufferings	Rs.25,000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Transport	Rs.5,000/-
5.	Attender charges	Rs.5,000/-
6.	Medical expenses	Rs.5,000/-
7.	Loss of amenities	Rs.10,000/-
8.	Loss of marital prospect:	Rs.50,000/-
9.	Loss of income during the treatment period:	Rs.4,500/-
	Total	Rs.3,07,280/-

12. Thus, the award is modified and scaled down to Rs.3,07,280/- with interest from the date of filing till the date of realisation.

13. The Learned Counsel for the Insurance Company stated that 50% of the award amount has already been deposited and from out of which, the claimant is permitted to withdraw a sum of Rs.3,00,000/-. In such case, the Insurance Company is permitted to withdraw the excess amount in deposit after deducting the award amount as modified and fixed in these appeals. The claimant is permitted to withdraw the balance award amount with proportionate interest on filing proper application. Accordingly, the C.M.A.Nos.648 & 1436 of 2015 are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrarbsm

To:-

The Motor Accidents Claims Tribunal (IV-Judge,
Court of Small Causes),
Chennai.



Copy to

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

+lcc to Mr.K.Varadhakamaraj, Advocate Sr.40647
+lcc to Mr.M.Krishnamoorthy, Advocate Sr.41144

C.M.A.Nos.648 & 1436 of 2015
& C.M.P.No.1 of 2015

gj[col]
srg 26/08/2021