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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.NO.655 OF 2015

AND

M.P.NO.1 OF 2015

The Bajaj Allianz General Insurance Co. Ltd.,
401 and 402, Third Floor,
Central Park Building,
Opposite to Municipal Office,
Tilak Road, Tirupathi.

... Appellant/2nd Respondent

Versus

1. Chennakesavan (Deceased) ... 1st Respondent/Petitioner

2. E.Prasad Reddy ... 2nd Respondent/1st Respondent

3. Kala

4. Kavitha

5. Chenguttuvan

6. Ilangovan

7. Shanthi

... Respondents

(Respondents 3 to 7 are impleaded
as per Order dated 01.12.2020
by Dr.GJJ in C.M.P.Nos.11365,
11366 and 11369 of 2020)

PRAYER:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 08.04.2014 in M.C.O.P.No.83 of 2011 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Krishnagiri.

For Appellant : Mr.T.K.Premkumar

For Respondents : No Appearance



J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant. There is no representation for the respondents.

2. The claimant/1st respondent died pending appeal and hence, his legal representatives are brought on record as respondents 3 to 7.

3. This appeal is preferred by the Insurance Company being aggrieved by the quantum of compensation awarded by the Tribunal to the claimant/1st respondent herein, who sustained left hand fracture (fracture of Femur lower end) in the road accident.

4. The brief facts of the case is that on 12.03.2010, at about 20.30 hours, when the claimant Chenna kesavan was travelling as a passenger in an auto bearing Registration No.AP-03-U-9434 towards Pachur from Toll Gage in Natampalli to Kuppam road. The driver of the lorry bearing Registration No.KA-08-3528 owned by one E.Prasad Reddy and duly insured under Bajaj Alliance General Insurance Co. Ltd., dashed against the auto in a rash and negligent manner and caused accident, wherein, Chennakesavan sustained injury and fracture of his left hand and injuries all over the body. Therefore, the claim petition was filed before the Tribunal seeking compensation of Rs.7,00,000/- against the owner of the offending lorry and its insurer.

5. Based on the injury and the disability certificate produced by the claimant, the Tribunal has applied multiplier for loss of income and awarded Rs.3,60,000/- per disability and Rs.42,180/- for other non-functional damages, the compensation of Rs.4,02,180/- was awarded as under:

Sl. No.	Heads	Amount granted by the Tribunal
1	Disability	Rs.3,60,000/-
2	Pain and Sufferings	Rs. 10,000/-
3	Medical Expenses	Rs. 8,180/-
4	Extra Nutrition	Rs. 10,000/-
5	Attendant Charges	Rs. 3,000/-
6	Loss of Income during convalescence	Rs. 6,000/-
7	Transportation	Rs. 5,000/-
	Total	Rs.4,02,180/-



6. The appellant/Insurance Company challenging the said award on the ground that the claimant was around 65 years, at the time of accident alleged to have sustained fracture in his left hand humerus bone and undergone surgery. The doctor has given the disability certificate assessing the injury as 50%. The claimant doing cloth business in his surrounding area. Though the said injury has not caused any functional disability, the Tribunal has erroneously applied multiplier method and more so, it has considered the disability as 100% functional disability and has awarded Rs.3,60,000/-, which is contrary to evidence and law.

7. On perusing the records, this Court finds that the injury sustained by the claimant/1st respondent is a fracture of his left hand humerus bone. Even, if it caused any constrain to the movement of the claimant as assessed by the doctor as 50%, it could be taken as functional disability. The Tribunal had accepted the said percentage of disability as physical disability, it should have awarded a sum of Rs.2,000/- per percentage. While converting it in to functional disability, it should have properly considered to what extent the injury have impairment in his function and earning capacity. There is no discussion about that in the award of the Tribunal and on considering the nature of injury, this Court finds that the fracture on the left hand humerus bone will not take away the earning capacity of the injured person in toto. Taking note of the computation of loss of income on the disability, this Court modifies the excess award passed by the Tribunal on various heads as under:

Sl. No.	Heads	Amount granted by the Tribunal	Amount granted by this Court
1	Disability	Rs.3,60,000/-	Rs.1,50,000/-
2	Pain and Sufferings	Rs. 10,000/-	Rs. 10,000/-
3	Medical Expenses	Rs. 8,180/-	Rs. 8,180/-
4	Extra Nutrition	Rs. 10,000/-	Rs. 10,000/-
5	Attendant Charges	Rs. 3,000/-	Rs. 3,000/-
6	Loss of Income during convalescence	Rs. 6,000/-	Rs. 6,000/-
7	Transportation	Rs. 5,000/-	Rs. 5,000/-
	Total	Rs.4,02,180/-	Rs.1,92,180/-

8. The compensation is accordingly reduced from Rs.4,02,180/- to Rs.1,92,180/-. The appellant/Insurance Company



is held liable to the said amount with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

9. The learned counsel for the appellant/Insurance Company submitted that he has already deposited entire award amount with interest in the M.C.O.P.No.83 of 2011. In such a case, any excess amount lying in M.C.O.P.No.83 of 2011 over and above the award as modified in this appeal, the same shall be withdrawn by the Appellant/Insurance Company on filing appropriate petition. The award as ordered by this Court in this Appeal shall be withdrawn by the legal heirs of the deceased Chennakesavan, who have been impleaded as respondents 3 to 7, on proper application.

10. Accordingly, this Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

The Principal Subordinate Judge,
Krishnagiri.

C.M.A.NO.655 OF 2015 AND
M.P.NO.1 OF 2015

MG (CO)
PBS/21/10/2021