

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED.06.08.2020

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.3013 of 2013 &
M.P.No.1 of 2013

The Branch Manager,
National Insurance Company Limited,
No.37/2C, Salem Main Road,
Mettur Dam,
R.S.P.B.No.19, Mettur Dam, Salem. ... Appellant/3rd Respondent

vs.

1.Suresh Kumar ... Respondent / Petitioner
2.Raman
3.Muthugounder ...2&3Respondents/
1&2 Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree passed in MACTOP.No.1311 of 2008 dated 21.07.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.5, Coimbatore present at Tiruppur.

For Appellant : Mrs.N.B.Surekha

For Respondent 1 : Mr.Ma.P.Thangavel

For Respondents 2 & 3: No appearance
Exparte.

JUDGMENT

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

This appeal has been filed by the insurance company challenging the award dated 21.07.2012 passed by the Motor Accident Claims Tribunal (Additional District Judge, Fast Track Court No.5, Coimbatore present at Tiruppur) in MCOP.No.1311 of 2008.

2. The Appellant insurance company has challenged the award both on its liability to pay the compensation as well as on the quantum of compensation assessed by the Tribunal.

3. Heard Mrs.N.B.Surekha, learned counsel for the Appellant and Mr.Ma.P.Thangavel, learned counsel for the first respondent. Despite service of notice on the respondents 2 and 3, there is no representation on their side.

4. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Pecuniary loss of income	2,16,000/- (4000 x 12 = 48,000 x 30 / 100 = 14,400 x 15)
Pain and suffering	25,000/-
Medical expenses	60,000/-
Total	3,01,000/-

5. The first contention raised by the Appellant is that they are not liable to pay compensation to the first respondent, since there was a delay in registration of FIR. According to them, the accident was alleged to have taken place on 03.11.2008 whereas FIR was registered only on 05.11.2008 which creates suspicious about the accident.

6. The contents of the FIR as well as the pleadings found in the claim petition and in the oral evidence adduced by the claimant are found to be consistent and conclusively establishes that the accident happened on 03.11.2008 which caused the injuries to the first respondent/claimant. No contra evidence has been produced by the Appellant as seen from the materials and evidence available on record before the Tribunal to disprove the contents of the FIR which was marked as Ex.A1. Therefore, the Tribunal has rightly rejected the contention of the Appellant/insurance company with regard to their denial of liability. The preponderance of probability based on the materials and evidence available on record also establishes the involvement of the insured vehicle in the accident.

7. Insofar as the second contention raised by the Appellant/insurance company with regard to the quantum of compensation awarded by the Tribunal is concerned, the analysis of this Court with regard to the said contention are as follows:

(a) Before the Tribunal, the first respondent/claimant has filed eleven documents which were marked as Ex.A1 to Ex.A11 and two witnesses were examined on his side namely the first respondent/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Appellant insurance company

neither any witness was examined nor any document filed.

(b) The first respondent/claimant was employed as a supervisor in Sakthi Broiler at Kangeyampalayam aged 37 years and in his claim petition, he had claimed that he was earning Rs.7,000/- per month. He has also filed his salary certificate before the Tribunal which was marked as Ex.A8. But the Tribunal has not accepted the salary certificate and instead has assessed the notional monthly income of the first respondent/claimant at Rs.4,000/-, since the first respondent/claimant has not examined his employer as a witness before the Tribunal. This court after giving due consideration to the year of the accident which happened in the year 2008 is of the considered view it is a correct assessment.

(c) The first respondent/claimant has sustained humorous bone fracture and another fracture in 2, 5 Metacarpal bones. The Doctor has assessed the disability of the first respondent/claimant at 40.4% but the Tribunal without any basis reduced the disability assessed by the Doctor at 40.4% to 30% which in the considered view of this Court is not a correct assessment. Accordingly, the assessment of the disability by the Doctor, PW2 at 40.4% rounded off to 40% is retained by this court.

(d) However, the Tribunal as seen from the impugned award has erroneously adopted multiplier method without any sound or concrete evidence that due to the injuries, the first respondent/claimant would have been totally crippled and unable to earn income. The contention of the Appellant in this Appeal is therefore accepted by this Court and the multiplier method adopted by the Tribunal under the impugned award for the assessment of the disability compensation to the first respondent/claimant is set aside by this Court and instead the compensation towards the disability is directed to be paid on percentage basis. Considering the year of the accident, this Court assessed the disability compensation at Rs.80,000/- calculated at Rs.2,000/- per percentage of disability for 40% disability.

(e) The Tribunal as seen from the impugned award has granted a sum of Rs.25,000/- as compensation towards pain and suffering which in the considered view of this Court is a correct assessment.

(f) The Tribunal as seen from the impugned award has granted only reimbursement of medical expenses to the first respondent/claimant amounting to Rs.60,000/- which are supported by Ex.P4 and Ex.P5, the medical bills. Excepting for awarding reimbursement of medical bills, the Tribunal has not awarded any compensation towards loss of income to the first respondent/claimant during the period of his treatment. The Tribunal has also not awarded any compensation towards transportation costs, extra nourishment, attender charges and loss of amenities.

(g) Having sustained grievous injuries and having been hospitalised two times as seen from the discharge summary, Ex.A3 and being treated as an out patient as well, the first respondent/claimant is certainly entitled for attender charges and loss of income. Therefore this Court is of the considered view that at least for a minimum period of ten months, the first respondent/claimant would have been unable to do his regular work as a supervisor. Accordingly, a sum of Rs.40,000/- is awarded as compensation towards loss of income to the first respondent/claimant during the period of treatment calculated at Rs.4,000/- per month for a period of ten months. This Court awards Rs.10,000/- towards transportation, Rs.5,000/- towards extra nourishment, Rs.15,000/- towards attender charges, and Rs.15,000/- towards loss of amenities in accordance with settled position of law.

8. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earning power due to disability	2,16,000/- (4000 x 12 = 48000 x 30 / 100 = 14400 x 15)	80,000/- (40% x 2000)
Loss of Income during the period of treatment for ten months.	---	40,000/-
Medical Expenses	60,000/-	60,000/-
Transportation	---	10,000/-
Extra Nourishment	---	5,000/-
Attender charges	---	15,000/-
Loss of amenities	---	15,000/-
Pain and suffering	25,000/-	25,000/-
Total	3,01,000/-	2,50,000/-

Conclusion:

9. In the result, this appeal is partly allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5%

is confirmed. The Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.2,50,000/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1311 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 as per the order of this Court to the first respondent/claimant through RTGS within a period of four weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court No.5, Coimbatore @
Truppur.

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

+1 cc to M/s.N.B.Surekha, Advocate Sr.No. 26264

C.M.A.No.3013 of 2013

CA(CO)

RMP(17/05/2021)

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