

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2020

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THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No. 2058 of 2016
and C.M.P.No. 15030 of 2016

The Oriental Insurance Co. Ltd.,
Motor Third Party Claims Office,
New No.216, Old No.115, Prakasam Salai,
Broadway, Chennai - 118 ... Appellant /2nd Respondent

vs.

1.Edward Maria Joseph ...1st Respondent/Claimant

2.T.Nathiya ...2nd Respondent/1st Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in MACT OP No. 1877 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes) at Chennai dated 7.10.2014.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.S.Gangaramprasad for R1
R2 - Exparte

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal is filed by the insurance company challenging the quantum.

2.On 19.11.2012, when the first respondent/claimant was riding his two wheeler on Arumbakkam 100 Feet Road, the car belonging to the second respondent, driven by its driver in a rash and negligent manner dashed against the two wheeler. Due to the said accident, the first respondent/ claimant sustained left frontal hematoma. Resultantly, he was given treatment as inpatient from 19.11.2012 to 11.12.2012. Again, he was treated as inpatient from 12.01.2013 to 18.01.2013 and he also underwent cranioplasty.

3.The first respondent/claimant was aged about 43 years at

the time of accident and he is a Diploma Holder in E.C.E. Prior to the accident, he was employed as Assistant Maintenance Technical in Sharjah Ports Authority and earning a sum of Rs.20,000/- per month. Placing reliance upon Exs.P12 and P13, the Tribunal held that the first respondent/claimant was about to join the service at Rs.20,000/- per month and for the future prospects, 30% has been added.

4.The Tribunal also took into consideration Ex.P7 medical bills. Though these bills would come to a sum of Rs.6 lakhs, it was actually fixed at Rs.6,50,000/-. P.W.2 was the doctor who has been examined to show the nature of injuries suffered by the claimant though he was not the doctor who treated him. His evidence has been taken into consideration. The Tribunal, while fixing the partial permanent disability at 70%, fixed 60% towards functional disability. After adopting multiplier 14 and adding future prospects, a sum of Rs.26,20,800/- has been fixed as loss of earning power. The Tribunal awarded a total compensation of Rs.43,53,800/- under the following heads:

Loss of income for 12 months	
(Rs.26,000/- x 12)	Rs. 3,12,000/-
Transportation	Rs. 50,000/-
Extra nourishment	Rs. 50,000/-
Damages to Clothing	Rs. 1,000/-
Medical expenses	Rs. 6,50,000/-
Attender Charges	Rs. 30,000/-
Mental agony	Rs. 1,00,000/-
Loss of amenities	Rs. 1,00,000/-
Loss of expectation (shortening)	
of life	Rs. 1,50,000/-
Pain and suffering	Rs. 1,50,000/-
Disability at 70% at Rs.2,000/-	
for each percentage	Rs. 1,40,000/-
Loss of earning power	
(Rs.26,000/- x 12 x 14 x 60%)	Rs. 26,20,800/-
	=====
Total	Rs. 43,53,800/-
	=====

5.Learned counsel appearing for the appellant submitted that granting Rs.3,12,000/- towards loss of income and that too by fixing a sum of Rs.26,000/- per month, which has been arrived by adding future prospects, is not correct. The claimant was treated as inpatient only for few days. Amounts have also been granted for extra nourishment and transportation charges. The medical expenses would come to Rs.6 lakhs even assuming the bills are accepted. Thus, the Tribunal is wrong in granting Rs.6,50,000/- for medical expenses. Under the heads - mental agony, loss of expectation of life and pain and suffering, amounts have been awarded. Mental agony is nothing

but pain and suffering in different form. As amounts have been awarded both under the heads disability and loss of earning power, no amount ought to have been awarded towards loss of expectation of life. The Tribunal ought not to have adopted multiplier method. Therefore, the appeal will have to be allowed.

6. Learned counsel appearing for the first respondent/claimant submitted that the fact remains that the first respondent/claimant underwent surgery and the injury was also on the head. The first respondent was working as Assistant Maintenance Technical in Sharjah Ports Authority before the accident and he was about to leave for job, at which point of time, he suffered injury. There is every possibility of recurrence of injury. The Tribunal has considered this aspect in awarding the compensation. Thus, the appeal will have to be dismissed.

7. The Tribunal, in our considered view, has admittedly awarded excess amount for the loss of income, taking into consideration 12 months without any basis. From the records, it is seen that the claimant was an inpatient only for few days. Therefore, at the maximum, the loss of income could be for three months. However, the Tribunal fixed Rs.26,000/- per month as against the actual income of Rs.20,000/-. The Tribunal committed wrong in awarding future prospects. Accordingly, we fix the amount under the said head at Rs.75,000/-. Similarly, for transportation, only Rs.10,000/- has to be awarded and so also Rs.25,000/- for extra nourishment. For the medical expenses, the Tribunal went beyond the medical bills submitted and awarded Rs.6,50,000/-. Even if we take the bills into consideration, it would only come to Rs.6 lakhs. Further mistake has been committed in awarding a sum of Rs.1 lakh towards mental agony apart from loss of expectation of life and loss of earning power. These heads could have been included both under the heads pain and suffering and loss of earning power. Therefore, the amounts awarded under the heads viz., mental agony and loss of expectation of life are deleted. For the loss of amenities, we grant a sum of Rs.25,000/- as against Rs.1 lakh as we feel the amount awarded by the Tribunal is very much on the higher side. The amounts awarded by the Tribunal under the other heads stand confirmed. The amount awarded for pain and suffering has been reduced to Rs.1,00,000/-. While doing so, mental agony suffered is also taken into consideration. Insofar as the loss of earning power is concerned, the Tribunal ought to have added Rs.25,000/- towards future prospects instead of 30%. Similarly, when the partial permanent disability is fixed at 70%, functional disability ought not to have been fixed at 60%. However, taking into consideration the injuries suffered on the head, we are inclined to fix the functional disability at 50%. Thus, loss of earning power comes to Rs.21 lakhs. Added to that, we are

inclined to award Rs.1 lakhs for future medical expenses. Thus, we arrive at a total compensation of Rs.32,90,000/- as under:

Loss of income for 3 months	..	Rs.	75,000/-
Transportation	..	Rs.	10,000/-
Extra nourishment	..	Rs.	25,000/-
Damages to Clothing	..	Rs.	1,000/-
Medical expenses	..	Rs.	6,00,000/-
Attender Charges	..	Rs.	30,000/-
Loss of amenities	..	Rs.	25,000/-
Pain and suffering	..	Rs.	1,00,000/-
Disability at 70% at Rs.2,000/- for each percentage	..	Rs.	1,40,000/-
Loss of earning power (Rs.26,000/- x 12 x 14 x 50%)	..	Rs.	21,84,000/-
Future medical expenses	..	Rs.	1,00,000/-
			= = = = =
Total	..	Rs.	32,90,000/-
			= = = = =

8. In such view of the matter, the Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

9. The appellant insurance company is directed to deposit the reduced compensation amount awarded by this Court along with proportionate interest, less the amount if any already deposited, to the credit of MACT OP No. 1877 of 2013 on the file of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes) Chennai within a period of four weeks from the date of receipt of a copy of the judgment.

10. We also direct the Tribunal to transfer the entire amount deposited by way of RTGS to the bank account of the claimant within a period of three weeks from the date of deposit of the award amount. On such transfer, the claimant is entitled to withdraw the same.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

Mmi

To

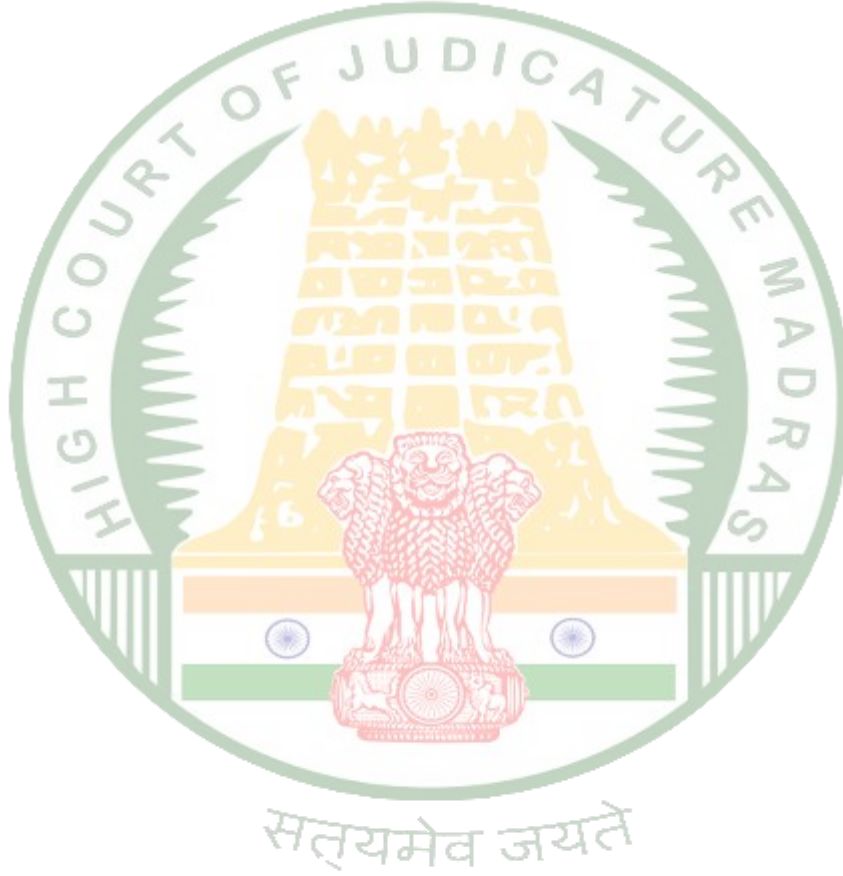
The Motor Accidents Claims Tribunal
(II Judge, Court of Small Causes), Chennai.

+1cc to Mr.M.Krishnamoorthy, Advocate, S.R.No. 10338

+1cc to Mr.G.Balaji Prasad, Advocate, S.R.No. 10625

C.M.A.No. 2058 of 2016

CP (CO)
GN (17/12/2020)



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