

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3777 of 2013 and
M.P.No.1 of 2013

The New India Assurance Co., Ltd.,
No.46, Moore Street,
Chennai - 1

... Appellant

Vs.

1. A. Francis

2. S.Srinivasan

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the Judgment and Decree dated 04.06.2013 in M.C.O.P.No.5366 of 2011 on the file of Motor Accident Claims Tribunal, (learned VI Judge, Court of Small Causes) Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.K.Varadha Kamaraj for R1
R2 - Exparte

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed seeking to set aside the Judgment and Decree dated 04.06.2013 in M.C.O.P.No.5366 of 2011 on the file of Motor Accident Claims Tribunal, (learned VI Judge, Court of Small Causes) Chennai.

2. The case of the 1st respondent / claimant is that on 01.11.2011 at about 10.15 a.m., while he was riding the motor cycle bearing Regn. No.TN-05-E-3967 along the Egmore Hails Salai towards north to south direction, at that time, a car bearing regn.no.TN21-AZ-8718 came from the same salai at Door No.23, towards east to west direction in a very rash and negligent manner endangering to the public safety and hit against the 1st respondent's motor cycle and thereby caused the accident. As a result, the 1st respondent sustained grievous injuries. At the time of accident, the 1st respondent was working as Chief E.E.C.Recordist at Government General Hospital, Chennai and was earning a sum of Rs.25,000/- per month and due to the accident, he had suffered left leg fracture, multiple injuries all over the body and head injury, therefore, he is not able to do his job, as he was doing prior to the accident. Since the appellant being insurer of the

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vehicle and 2nd respondent being owner of the vehicle, the 1st respondent has claimed compensation of Rs.6,00,000/- against them.

3. The appellant / Insurance Company has filed a detailed counter before the Tribunal and submitted that it is the 1st respondent, who had driven the vehicle in a zig zag manner and invited the accident, therefore, he is not entitled to get any compensation. Further, the 2nd respondent has not intimated them about the accident and he has not furnished the particulars regarding his vehicle and driving license. Therefore, he pleaded to dismiss the claim petition filed by the claimant / 1st respondent.

4. The Tribunal considering the pleadings, counter pleadings, oral and documentary evidences produced on record has awarded a compensation of Rs.5,24,418/- to the 1st respondent and the same is tabulated below. Aggrieved against the same, the appellant / Insurance Company is before this Court.

Sl.No.	Head	Amount
01	Loss of Income for two months	Rs.59,026/-
02	Transportation	Rs.6,000/-
03	Extra Nourishment	Rs.5,000/-
04	Damage to Clothes	Rs.1,500/-
05	Medical Expenses	Rs.33,321/-

Sl.No.	Head	Amount
06	Attender Charges	Rs.5,000/-
07	Pain and Sufferings	Rs.25,000/-
08	Loss of Earning Power	Rs.3,89,571/-
	TOTAL	Rs.5,24,418/-

5. The learned counsel for the appellant submitted that the Tribunal erred in awarding excessive amount of Rs.3,89,571/- towards loss of earning power due to the alleged functional disability of 15% by applying the multiplier method overlooking the fact that the 1st respondent, Chief E.E.G.Recordist in Rajiv Gandhi Govt., General hospital, Chennai continues in service and did not suffer any loss of earning power.

6. The learned counsel for the appellant also submits that the Tribunal erred in applying 15% loss of earning power after having fixed the same at 10% and thereby pleaded to set aside the order passed by the Tribunal.

7. The learned counsel for the 1st respondent submitted that the amount awarded by the Tribunal under the various heads are just and reasonable and hence the same needs no interference in the hands of this

Court. In support of his contention, the learned counsel relied on the Judgment of this Court reported in **2014 (1) TN MAC 663 [Iffco Tokio General Insurance Co., Ltd., Bangalore V. S.Kannadasan and another]** wherein it is held that the "injured suffered 45% disability and on leave from 17.08.2011 to 08.11.2011, the claimant was paid salary from his earned leave. The Tribunal rejecting the claim on the ground that claimant not entitled to leave salary from earned leave amount is not proper. Loss of earning during treatment one of factors to be considered for award of compensation. Had the claimant not suffered injuries, there would not have been any necessity for him to avail earned leave and entitled to Rs.99,000/-"

8. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent and perused the documents placed on record. The 2nd respondent was set exparte before the Tribunal as well as before this Court.

9. Before the Tribunal, the 1st respondent was examined himself as P.W.1 and the Doctor was examined as P.W.2 and exhibits Ex.P.1 to P.16 were marked. No witness and no documents were marked on the side of

the appellant.

10. Admittedly, there is no dispute with regard to the negligence and liability aspects and the dispute is only with respect to the quantum.

11. On the perusal of the order passed by the court below, it is seen that the Tribunal by taking into account Ex.P.7, Salary slips for the months of August, September and October in the year 2011, has fixed the income of the 1st respondent as Rs.29,513/-. It is not in dispute that the 1st respondent is a government servant, viz., Chief E.E.C.Recordist at G.H.Hospital Chennai and aged 53 years. The 1st respondent had applied leave and the same is evident from Ex.P.6, viz., leave order given by General Hospital, from which it is clear that the 1st respondent was granted leave for 80 days, while that being the factual situation, the question of loss of income for two months does not arise, in the considered opinion of this Court. Moreover, in the Judgment of this Court cited supra, it is clear that that the injured therein had applied for earned leave, but in the present case, the injured had applied for medical leave. The earned leave is different from medical leave, therefore, the question of granting the loss of income does not arise and the amount of Rs.59,026/- awarded by the Tribunal under the head Loss of Income for two months is hereby deleted.

12. Further, the Tribunal has also erred in awarding an amount of Rs.3,89,571/- towards loss of earning power by applying multiplicand. The Doctor, P.W.2, who had examined the 1st respondent had fixed 55% disability to the 1st respondent, this Court, taking into account of the injuries suffered by the 1st respondent coupled with Ex.P.15, Disability Certificate, issued by the Doctor, and nature of injuries suffered by the 1st respondent, hereby fixes 50% disability to the 1st respondent and since the accident is of the year 2011, a sum of Rs.3,000/- per percentage, would be a reasonable amount, hence, [Rs.3,000/- X 50%] a sum of Rs.1,50,000/- is hereby awarded towards loss of earning power [a sum of Rs.3,89,571/- under the head loss of earning power is hereby modified to Rs.1,50,000/-].

13. Except the above said modifications, the amount awarded by the Tribunal under different heads stand confirmed and the same are tabulated below:

Sl. No	Head	Amount awarded by the Tribunal	Amount awarded by this Court
01	Loss of Income for two months	Rs.59,026/-	-
02	Transportation	Rs.6,000/-	Rs.6,000/-
03	Extra Nourishment	Rs.5,000/-	Rs.5,000/-
04	Damage to Clothes	Rs.1,500/-	Rs.1,000/-
05	Medical Expenses	Rs.33,321/-	Rs.33,321/-

Sl. No	Head	Amount awarded by the Tribunal	Amount awarded by this Court
06	Attender Charges	Rs.5,000/-	Rs.5,000/-
07	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-
08	Loss of Earning Power	Rs.3,89,571/-	Rs.1,50,000/-
	TOTAL	Rs.5,24,418/- Rounded off Rs.5,24,500/-	Rs.2,25,321/- Rounded off Rs.2,25,400/-

In the result, the present Appeal is partly allowed and the Judgment and Decree dated 04.06.2013 in M.C.O.P.No.5366 of 2011 on the file of Motor Accident Claims Tribunal, (VI Court of Small Causes) Chennai is modified to the extent indicated above with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant and the 2nd respondent jointly or severally is directed to deposit the said amount to the Credit of M.C.O.P.No.5366 of 2011 on the file of the Motor Accident Claims Tribunal (VI Judge, Court of Small Causes), Chennai, along with interest and costs as determined by this Court, within a period of six weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the 1st respondent is permitted to withdraw the amount, by filing an appropriate application before the Court concerned. Consequently, connected miscellaneous petition is closed. No costs.

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Index : yes/no; Internet : yes/no
Speaking /Non-Speaking Judgment

To

1. The Motor Accident Claims Tribunal, (learned VI Judge, Court of Small Causes) Chennai.
2. The Section Officer,
VR Section, Madras High Court, Chennai



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V.BHAVANI SUBBAROYAN, J.,

ssd



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