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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.10.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.2438 of 2016

and

C.M.P.No.17185 of 2016

The Royal Sundaram Alliance Insurance Company Limited,
Millennium City IT Park,
Unit Nos.T-2, 2A Tower-II,
Plot Nos.DN62 Sector V Salt Lake,
Kolkatta 700 091.

.. Appellant / 2nd Respondent

/versus/

1.R.C.Raghunathan

... 1st Respondent / Petitioner

2.M/s Chetna Carrying Corporation,
No.32, Ezra Street, North Block,
Suite No.863, 8th Floor,
Kolkatta 700 001.

.. 2nd Respondent / 1st Respondent

(2nd respondent ex parte in lower court)

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of M.V.Act, 1988, against the judgment and decree in M.C.O.P.No.5829 of 2011, dated 18.01.2016 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s Harini for
Mr.N.Vijayaraghavan

For Respondents : Ms.A.Subadra for
Mr.V.Velu for R1

R2-exparte



J U D G M E N T

(The case has been heard through video conference)

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This appeal is filed by the Insurance Company against the quantum of compensation awarded by the Tribunal for the injury sustained by the motor accident victim.

2.The victim is a passenger bus driver and employed in Hyundai Company at the time of accident. Near Thandalam bus stand on the Vellore-Chennai Highways a container lorry suddenly swerved to the left side of the road without signal and dashed against the bus driven by the claimant. The claimant sustained multiple grievous injuries all over his body including fracture of right comm-United end, tibula condyle and fracture neck of fibula. The Doctor, who has assessed the disability, has certified that the said disability has caused 65% partial permanent disability. The Tribunal, on analysing the claim petition, taking note of the salary certificate issued by the employer of the claimant and medical records, disability certificate, awarded a sum of Rs.13,55,000/- as compensation to the claimant. The Tribunal has considered the fracture caused to the claimant in the accident has impaired his earning capacity being a driver. Hence, the Tribunal has assessed the functional disability as 50% of the earning capacity.

3.Aggrieved by the quantum of compensation, the appeal is preferred by the Insurance Company on the ground that for the simple injury the Tribunal has awarded Rs.1,95,000/- under the head of disability and Rs.8,25,000/- was awarded under the head of loss of earning capacity, besides Rs.50,000/- was awarded under the head of loss of earning during the period treatment. On the other non-conventional heads also the Tribunal has awarded exorbitant sum disproportionate to the nature of the injury, treatment and loss of earning.

4.Per contra, the learned counsel appearing for the claimant/1st respondent would submit that the spirit of the Motor Vehicles Act is to pay fair and adequate compensation. The claimant, who is the driver by profession, aged about 54 years sustained injury, while driving the bus for his employer. The injury has caused his employment and earning capacity. The



Tribunal has taking note of the injury sustained by the claimant and has rightly awarded Rs.13,55,000-00 with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation.

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5.The learned counsel appearing for the appellant/Insurance Company would reiterate that the injury has not taken away the earning capacity of the claimant. Subsequent to the accident, he has renewed his professional driving license twice and still he is earning as a driver without impediment on disability in earning as driver. To substantiate the said contention, the current driving license of the claimant is circulated by way of a memo. The learned counsel would also submit that if really the claimant has any physical disability, professional driving license could not be renewed by the Regional Transport Office(RTO).

6.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 1st respondent and perused the records.

7.On considering the rival submissions, this Court finds that the application of multiplier for the disability by the Tribunal is fair and justifiable in this case since the nature of injury and the nature of avocation of the claimant goes to show that the claimant due to the injury could have lost certain percentage of his earning skill. Whether it is 50% as assessed by the Tribunal or whether it will be less to consider with the help of the disability certificate and the present document circulated by the Insurance Company.

8.The fracture of the right leg bone after treatment has comm-United but with restricted movement. The physical disability has assessed by the Doctor, vide disability certificate Ex.P13 as 65%. For a fracture in one limb, the assessment of the Doctor appears to be very excessive. However, when it converted into disability, the nature of avocation of the claimant has to be taken note of. In the present case, the claimant is a professional bus driver. Hence, this Court is of the view that the loss of earning capacity fixed at 50% by the Tribunal is on the higher side and it should be reduced to 40%. Having compensated for the loss of earning capacity, additional compensation under the head of disability is not warranted.



Therefore, this Court modifies the award of the Tribunal as under:-

Sl. No.	Particulars	Award of the Tribunal (Rs.)	Modified award of this Court (Rs.)	Confirmed / Reduced/ Enhanced/ Deleted
1.	Transportation, nourishing food and miscellaneous expenses	50,000-00	50,000-00	confirmed
2.	Medical expenses	80,000-00	80,000-00	confirmed
3.	Attender charges	5,000-00	5,000-00	confirmed
4.	Disability	1,95,000-00	-----	deleted
5.	Loss of earning during the period of treatment	50,000-00	50,000-00	confirmed
6.	Damages for pain suffering and trauma	1,00,000-00	1,00,000-00	confirmed
7.	Loss of earning capacity	8,25,000-00 (12500x12x11x50%)	6,60,000-00 (12500x12x11x40%)	reduced
8.	Loss of amenities	50,000-00	50,000-00	confirmed
Total		13,55,000-00	9,95,000-00	reduced

9. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs. The modified award of Rs.9,95,000/- with interest at the rate of 7.5% p.a. shall be paid within a period of 12 weeks from the date of petition till date of realisation. Consequently, connected Miscellaneous Petition is closed.

10. The Insurance Company/appellant has already deposited 50% of the award amount passed by the Tribunal in the MCOP account as per interim order passed by this Court dated 04.11.2016. Therefore, the Insurance Company/appellant shall



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deposit the modified award amount within a period of 12 weeks from the date of receipt of a copy of this order, less the amount already deposited if any. The claimant is permitted to withdraw the same on filing proper application.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
II Judge, Small Causes Court, Chennai.

2.The Section Officer
V.R.Section
High Court, Chennai.

+1cc to M/s.V.Velu, Advocate, S.R.No.34345

C.M.A.No.2438 of 2016

and

C.M.P.No.17185 of 2016

AP(CO)

SB(14/09/2021)