

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2421 of 2014
and M.P.No.1 of 2014

The New India Assurance Co. Ltd.,
482, 483, S.N.P.Chambers, 3rd Floor,
Coimbatore - 12. ...Appellant/2nd Respondent

vs.

1.Shankar ... 1st Respondent/Claimant

2.Kulandaivelu ... 2nd Respondent/1st Respondent

(The 2nd respondent herein was the 1st respondent
before the tribunal and he remained exparte before the tribunal.

Hence, summons to 2nd respondent herein may be dispensed with)
Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988, against the decree and judgment dated
27th day of August, 2008, made in M.C.O.P.No.246 of 2007, on
the file of the Motor Accident Claims Tribunal, Sub Court,
Sankagiri.

For Appellant : Mr.R.Sivakumar

For Respondents : Mr.C.Kulanthaivel for R1
R2 - exparte

JUDGMENT

(This appeal was heard through the Video Conferencing)

This appeal has been filed by the Appellant Insurance
Company challenging the Award dated 27.08.2008 passed by the
Motor Accident Claims Tribunal, Sub Court, Sankagiri, in
M.C.O.P.No.246 of 2007.

2.Heard Mr.R.Sivakumar, learned counsel for the Appellant
and Mr.C.Kulanthaivel, learned counsel for the first respondent.
The second respondent has remained exparte both before the
Tribunal as well as this Court.

3.The Tribunal under the impugned Award has directed the

Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.3,14,302/- together with interest and cost for the injuries sustained by him as a result of an accident on 08.04.2007 caused by a vehicle owned by the second respondent and insured with the Appellant.

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

29% disability compensation	-	Rs.1,67,040/-
Pain and suffering	-	Rs.10,000/-
Extra nourishment	-	Rs.5,000/-
Transportation	-	Rs.5,000/-
Future medical expenses	-	Rs.20,000/-
Medical bills	-	Rs.90,262/-
Discomfort	-	Rs.5,000/-
loss of income for 4 months	-	Rs.12,000/-

Total		Rs.3,14,302/-

5.The Appellant/claimant has challenged the impugned Award on the following grounds:

(a)The Tribunal ought not to have adopted multiplier method for assessing the compensation towards loss of earning capacity.

(b)The quantum of compensation awarded by the Tribunal is excessive.

6.The first respondent/claimant has pleaded in his claim petition filed before the Tribunal that he was aged 35 years and a manufacturer of silver chains and anklets earning Rs.6,000/- per month at the time of the accident. He sought for a compensation of Rs.5,00,000/- for the injuries sustained by him as a result of the accident.

7.Before the Tribunal, the first respondent/claimant as well as another claimant who was also injured in the same accident preferred a separate claim which is the subject matter of M.C.O.P.No.246 of 2007. They together filed 14 documents which were marked as Exs.A1 to A14 and together examined four witnesses as PW1 to PW4 which included the first respondent/claimant who was examined as PW2 and the Doctor who examined the first respondent/claimant, who issued the disability certificate was also examined as a witness before the Tribunal. On the side of the Appellant Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

8.The first respondent/claimant has sustained the following injuries:

(a)Lacerated wound over the anterior aspect of right knee joint

(b)Fracture of shaft of right femur with basal neck fracture with displaced inter condylar fracture.

9.The nature of injuries sustained by the first respondent/claimant is supported by wound certificate, discharge summary and the disability certificate which have been marked as exhibits before the Tribunal. No contra evidence has also been produced by the Appellant Insurance company to disprove the nature of injuries sustained by the first respondent/claimant as pleaded in his claim petition. The Doctor assessed the total disability of the first respondent/claimant at 35% including 6% for pain and suffering. However, the Tribunal has adopted the multiplier method for assessing the compensation towards loss of earning capacity for the first respondent/claimant based on 29% disability.

10.This Court does not find any infirmity in the assessment of the compensation towards loss of earning capacity of the first respondent/claimant by the Tribunal.

11.Having sustained grievous injuries and in view of the fact that the first respondent/claimant was aged 35 years at the time of the accident and was a manufacturer of silver chains and anklets, the Tribunal has rightly adopted multiplier method. The discharge summary filed before the Tribunal which has been marked as Ex.A9 also reveal that the first respondent/claimant would have been unable to do his regular work for a long period of time. Therefore, the Tribunal has rightly adopted the multiplier method for assessing the compensation to the first respondent/claimant towards loss of earning capacity.

12.With regard to the quantum of compensation awarded by the Tribunal under the heads pain and suffering at Rs.10,000/-, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards transportation, Rs.20,000/- towards future medical expenses, Rs.90,262/- towards reimbursement of medical bills, Rs.5,000/- towards discomfort and Rs.12,000/- towards loss of income calculated for 4 months (Rs.3,000 x 4 months) cannot be considered to be excessive as alleged by the Appellant Insurance Company, if due consideration was given to the avocation of the first respondent/claimant as well as nature of injuries sustained by him as a result of the accident.

13.For the foregoing reasons, this Court is of the considered view that there is no merit in this appeal.

14.Accordingly, the appeal shall stand dismissed. The Appellant Insurance Company is directed to deposit the amount awarded by the Tribunal, after deducting the amount already

deposited if any, together with interest at the rate of 7.5% p.a. from the date of claim till the date of realization to the credit of M.C.O.P.No.246 of 2007, on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri, 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 lying to the credit of M.C.O.P.No.246 of 2007 to the bank account of first respondent/claimant, through RTGS, within a period of two weeks thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

pam

To

1.The Motor Accidents Claims Tribunal,
Sub Court, Sankagiri.

Copy To

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 31896

+1cc to Mr.R.Sivakumar, Advocate, S.R.No. 31866

C.M.A.No.2421 of 2014

VBA (CO)
GN (27/04/2021)

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