

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2645 of 2014
and M.P.No.1 of 2014

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Lakshmi Towers, No.200/3,
1st Floor, R.V.Road,
Bangalore - 560 004. ...Appellant/2nd respondent

vs.

1.Tamilpriyan ...1st Respondent/Claimant
2.Mrs.Sujatha
Prop.M/s.Om Sai Transports,
Sharavathi Layout,
Bhattarahalli,
Old Madras Road,
Bangalore - 560 049. ...2nd Respondents/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.555 of 2013, dated 19.07.2013, on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Mr.E.Rajadurai
for Mr.N.Vijaya Raghavan

For Respondents: Mr.Mukund R.Pandiyan for R1
R2 - insufficient address

JUDGMENT

(This case was heard through Video Conferencing)

This appeal has been filed by the Insurance Company challenging the Award dated 19.07.2013 passed by the Motor Accident Claims Tribunal, Special Sub Judge, Krishnagiri in M.C.O.P.No.555 of 2013.

2.Heard Mr.E.Rajadurai, learned counsel for the Appellant and Mr.Mukund R.Pandiyan, learned counsel for the first respondent.

3.The Tribunal under the impugned Award has directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.5,46,500/- together with interest and cost for the injuries sustained by him as a result on accident on 23.06.2005 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:

Heads	Awarded by the Tribunal in Rs.
Loss of earning capacity	3,40,200/-
Pain and suffering	50,000/-
Nutrition and transportation	20,000/-
Medical bills	1,01,300/-
Future medical expenses	25,000/-
Attender charges	Rs.10,000/-
Total	Rs.5,46,500/-

5.The Appellant Insurance Company has challenged the impugned Award on the following grounds:

(a)The Tribunal has erroneously adopted the multiplier method for assessing the loss of earning capacity to the first respondent/claimant.

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

6.The first respondent/claimant was a twelfth standard student aged 16 years at the time of the accident. In his claim petition, he has pleaded that he was earning Rs.2,000/- per month by helping his mother in a provision store.

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

(a)Abrasion on the left forehead
(b)Abrasion on the left chest
(c)Abrasion on the left knee
(d)Abrasion on the right popliteal joint
(e)Abrasion on the right thigh, right knee and right leg
(f)Left ankle swelling and multiple abrasion and contusion present.

8.Skin grafting was performed on the first respondent/claimant as seen from the discharge summaries issued

by the respective hospitals which has been marked as Exs.P4 to P7 before the Tribunal. The Tribunal has observed that due to the injuries sustained by the first respondent/claimant he was unable to walk and stand for a long period of time. The Tribunal has also observed that the first respondent/claimant is unable to do his work as before.

9.Before the Tribunal, the first respondent/claimant has filed 12 documents which were marked as Exs.P1 to P12 and two witnesses were examined on his side namely, the Appellant/claimant himself as PW1 and the Doctor who examined him as PW2. On the side of the Appellant Insurance Company, neither any document was filed nor any witness examined before the Tribunal.

10.The Doctor (PW2) has assessed the disability of the first respondent/claimant at 40%. However, the Tribunal has reduced the same to 35%. But, without assessing the whole body disability, the Tribunal has taken 35% as the disability of the first respondent/claimant for the purpose of calculating the loss of earning capacity by adopting the multiplier method. This Court is of the considered view that the Tribunal ought to have assessed the whole body disability of the first respondent/claimant for the purpose of assessing the compensation towards loss of earning capacity.

11.This Court has perused and examined the oral and documentary evidence filed by the first respondent/claimant before the Tribunal.

12.This Court after giving due consideration to the nature of injuries sustained by the first respondent/claimant as seen from the evidence available on record and the avocation of the first respondent/claimant, is of the considered view that the whole body disability of the first respondent/claimant will have to be assessed at 20% instead of 35% assessed by the Tribunal.

13.Insofar as the notional future monthly income of the first respondent/claimant fixed by the Tribunal at Rs.4,500/- is concerned, the same is a correct assessment as the first respondent/claimant was only a student aged 16 years at the time of the accident.

14.The Tribunal has rightly adopted the multiplier method in view of the nature of injuries sustained by the first respondent/claimant and his long period of hospitalisation as seen from the discharge summaries issued by the respective hospitals which has been marked as Exs.P4 to P7.

15.No contra evidence has also been produced by the Appellant with regard to the nature of injuries sustained by the

first respondent/claimant. Therefore, the contention of the Appellant that the Tribunal has erroneously adopted the multiplier method for the purpose of calculating the loss of earning capacity of the first respondent/claimant cannot be accepted by this Court. However, as indicated earlier, the whole body disability is fixed at 20% by this Court instead of 35% fixed by the Tribunal.

16. In view of the same, the compensation towards loss of earning capacity to the first respondent/claimant is reduced from Rs.3,40,200/- to Rs.1,94,400/- by this Court in the following manner:

Heads	Awarded by the Tribunal in Rs.	Modified by this Court in Rs.
Loss of earning capacity	$4,500 \times 12 \times 18 \times 35\% =$ Rs.3,40,200/-	$4,500 \times 12 \times 18 \times 20\% =$ Rs.1,94,400

17. The Tribunal has awarded a compensation of Rs.50,000/- towards pain and suffering, Rs.1,01,300/- towards reimbursement of medical bills and Rs.25,000/- towards future medical expenses cannot be considered to be excessive as alleged by the Appellant Insurance Company. Therefore, the compensation awarded under those heads is confirmed by this Court.

18. The Tribunal has also awarded a meagre compensation towards transportation and extra nourishment as well as attender charges which has to be necessarily enhanced considering the nature of injuries sustained by the first respondent/claimant. Accordingly, the compensation awarded towards transportation and extra nourishment is enhanced from Rs.20,000/- to Rs.30,000/- and towards attender charges is also enhanced from Rs.10,000/- to Rs.20,000/- by this Court.

19. The Tribunal has erroneously failed to award any compensation towards loss of amenities and damages to clothing to the first respondent/claimant. Accordingly, based on the materials and evidence available on record, this Court Awards a compensation of Rs.25,000/- towards loss of amenities and Rs.1,200/- towards damages to clothing.

20. For the foregoing reasons, the compensation awarded by the Tribunal is reduced from Rs.5,46,500/- to Rs.4,46,900/- in the following manner:

Heads	Awarded by the Tribunal in Rs.	Reduced by this Court in Rs.
Loss of earning capacity	3,40,200/-	1,94,400/-

Heads	Awarded by the Tribunal in Rs.	Reduced by this Court in Rs.
Pain and suffering	50,000/-	50,000/-
Nutrition and transportation	20,000/-	30,000/-
Medical bills	1,01,300/-	1,01,300/-
Future medical expenses	25,000/-	25,000/-
Attender charges	10,000/-	20,000/-
Loss of amenities	-	25,000/-
Damages to clothing	-	1,200/-
Total	Rs.5,46,500/-	Rs.4,46,900/-

21.The Appellant Insurance Company is directed to deposit the reduced award amount of Rs.4,46,900/- after deducting the amount already deposited if any, together with interest at the rate of 6% p.a. from the date of claim till the date of realization to the credit of M.C.O.P.No.555 of 2013, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, 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.555 of 2013 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

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

pam

To

1.The Motor Accident Claims Tribunal,
Special Sub Judge, Krishnagiri.

Copy to:

The Section Officer,
Vernacular Section,
Madras High Court.

+1cc to Mr.Mukund R.Pandiyan, Advocate, sr no.32181

C.M.A.No.2645 of 2014

VBA (CO)

RMP (03/03/2021)