

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2020

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.A.No.4024 of 2019
and
CMP No.22728 of 2019

The Manager-Claims
IFFCO Tokio General Insurance Co. Ltd.,
No.128, IFFCO Bhavan, 4th Floor
Habibullah Road, T.Nagar
Chennai-600 017.

.. Appellant/2nd Respondent

vs.

1. Venugopalan .. 1st Respondent/ Petitioner
2.Sakthi ..2nd Respondents/1st Respondent

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.03.2019 passed in MCOP.No.75 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Hosur.

For Appellant : Mr.S.Arun Kumar
For Respondents : No Appearance

J U D G M E N T

The judgment and decree dated 25.03.2019 passed in MCOP No.75 of 2018 on the file of the Motor Accident Claims Tribunal/Additional District Judge, Hosur, is under challenge in the present Civil Miscellaneous Appeal.

2. IFFCO Tokio General Insurance Company is the appellant, who filed this appeal questioning the compensation awarded by the Tribunal.

3. The accident occurred on 24.09.2016 at 1.30 p.m at Berikai-Bagalur Road, near Vanaprastha International School, Mugualapalli, The Bagalur Police Station, Krishnagiri District registered a case in Crime No.370 of 2016. The first respondent/claimant was riding TVS Scooty Scooter bearing

Registration No.TN-24-Y-0993 from Mugulapalli to Bagalur. The first respondent/claimant, due to the accident sustained grievous injuries including head injury and frontal bone fracture. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.9,88,000/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation awarded by the Motor Accident Claims Tribunal is not only excessive, but also not in commensuration with the gravity of the injuries sustained by the first respondent/claimant. There is no proof towards employment and the income. In the absence of any proof, the Tribunal is wrong in fixing a sum of Rs.10,000/- per month as income. The assessment of physical disability and loss of earning power is distinct and therefore, 45% assessed is also unwarranted. Further, Ex.P9 disability certificate did not reveal whether the assessment of disablement with reference to the whole body or for the particular part of the body. In view of this ambiguity, the Tribunal ought not to have awarded higher compensation more specifically by adopting the multiplier method. But, the Tribunal arrived a conclusion that the accident occurred due to the negligence of the second respondent and accordingly, fixed the liability on the appellant/Insurance Company.

5. As far as the quantum of compensation is concerned, this Court has to consider the nature of the injuries sustained by the first respondent/claimant. It is relevant to consider the disability certificate-Ex.P9 issued by the District Medical Board. The doctor fixed the permanent disability at 45%. The findings in this regard are extracted hereunder:

The petitioner has marked Ex.P5 Discharge summary issued by the Kauvery Hospital, Hosur which reveals that the final diagnosis was Supra Condylar fracture right Humerus, frontal bone fracture left side. During the course of cross examination PW1 admitted that the injuries sustained by him are all grievous injuries. Considering the injuries, the District Medical Board, Krishnagiri examined the petitioner and issued Disability Certificate Ex.P9 in which it has been stated that the petitioner sustained 45% of disability. This Court has taken the disability issued by the Medical Board as per the direction of the Hon'ble High Court.

6. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion that it is not a functional disability and in fact, the claimant is self-employed, more specifically he is a proprietor of DTP Xerox shop at Bagalur. Therefore, there is no future loss of income. This being the factum, the award of compensation by adopting the multiplier is unnecessary. Contrary, a sum of Rs.5,000/- for 1% disability shall be granted. Accordingly, a compensation of Rs.9,88,000/- awarded by the Motor Accident Claims Tribunal is modified as detailed hereunder:

1) Loss of Income (45% x 5000):	Rs.	2,25,000/-
2) Transportation charges	: Rs.	20,000/-
3) For Nutrition	: Rs.	20,000/-
4) Attender charges	: Rs.	20,000/-
5) Pain and suffering	: Rs.	50,000/-
6) Loss of amenities	: Rs.	20,000/-
7) Medical Bills	: Rs.	83,000/-
8) Future Medical Expenses	: Rs.	25,000/-

Total:	Rs.4,63,000/-
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7. Thus, the first respondent/claimant is entitled for the total compensation of Rs.4,63,000/- along with interest at the rate of 7.5% per annum. The Appellant/Insurance Company is directed to deposit the modified award amount with accrued interest, if not already deposited within a period of 12 weeks from the date of receipt of a copy of this judgment and on such deposit, the first respondent/claimant is permitted to withdraw the modified award amount by filing an appropriate application and the payments are to be made through RTGS.

8. Accordingly, the Judgment and Decree dated 25.03.2019 passed in M.C.O.P.No.75 of 2018 stands modified and this Civil Miscellaneous Appeal stands allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.Additional District Judge,
The Motor Accident Claims Tribunal,
Hosur.

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

+1 cc to Mr.S.Arunkumar, Advocate Sr.No. 29852

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GP(CO)
RMP(10/06/2021)