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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

CIVIL MISCELLANEOUS APPEAL NO. 711 OF 2021

M/s.Reliance General Insurance Company Limited,  
Reliance House, No.6, 6<sup>th</sup> Floor,  
Haddows Road, Nungambakkam,  
Chennai-600 006.

.. Appellant/2<sup>nd</sup> Respondent

Versus

1.R.Vidhya

.. 1<sup>st</sup> Respondent/Petitioner

2.Amada Soft India Private Limited,  
No.54/55, North Usman Road,  
T.Nagar, Chennai-600 017.

.. 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 27.02.2020 made in M.C.O.P. No. 351 of 2013 on the file of the Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.R.Thirugnanam

For R2 : Set Exparte



## JUDGMENT

S. KANNAMMAL, J

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by the award dated 27.02.2020 made in M.C.O.P. No. 351 of 2013 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, the appellant/Insurance Company has preferred this appeal challenging the quantum of compensation.

2. On 17.10.2010 at about 16.30 hrs when the claimant was traveling in the car bearing registration number TN 09 AV 2920 at G W T Road, Opposite to Nokia Company, C.R.P Chatram, Sriperumbudur, proceeding towards Chennai, the same was driven in a rash and negligent manner and at the time front left tyre of the car suddenly burst out due to which, the car hit against the stationary lorry bearing registration No.TN 21 AC 4380 and the claimant sustained grievous injuries due to the rash and negligent driving of the driver of the car. Hence the claimant/first respondent herein filed the claim petition in M.C.O.P. No.351 of 2013 against the appellant and second respondent claiming a sum of Rs.16,00,000/- as compensation.

3. The claim petition filed by the claimant resisted by the appellant/Insurance Company disputing the manner of accident, the nature of injury, the alleged loss of earning capacity and also disputed the quantum of compensation sought by the claimant under various heads.

4. Before the Tribunal, in order to prove the averments in the claim petition, on the side of the claimant P.W.1 to P.W.4 were examined and Ex.P.1 to P23 were marked. The disability certificate issued by the Regional Medical Board to the claimant/ petitioner in M.C.O.P.No.351 of 2013 was marked as Ex.C.1. On the side of respondents, no oral or documentary evidence was adduced.

5. The Tribunal after analyzing the entire evidence available on record came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the car and passed an award for sum of Rs.31,24,700/- and directed the Insurance Company/Insurer of the offending vehicle to pay the same with interest at 7.5% per annum.



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6. We have heard the counsel for both sides and perused the materials placed on record. The Tribunal, on appreciation of the oral and documentary evidence, awarded compensation under various heads as under.

| Sl.No | Head under which the amount is awarded | Amount awarded by the Tribunal(in Rs.)             |
|-------|----------------------------------------|----------------------------------------------------|
| 1     | Pain and Sufferings                    | Rs.50,000/-                                        |
| 2     | Extra Nourishment                      | Rs.50,000/-                                        |
| 3     | Loss of earning                        | Rs.24,19,200/-                                     |
| 4     | Medical Expenses                       | Rs. 4,19,515/-                                     |
| 5     | Loss of Amenities                      | Rs. 50,000/-                                       |
| 6     | Attender Charges                       | Rs.50,000/-                                        |
| 7     | Damages to cloths                      | Rs. 1,000/-                                        |
| 8     | Future Medical Expenses                | Rs.70,000/-                                        |
| 9     | Transportation charges                 | Rs.14,905                                          |
|       | Total                                  | Rs.31,24,620/-<br>rounded off to<br>Rs.31,24,700/- |

7. Though very many contentions were raised in the appeal filed by the appellant, the learned counsel for the appellant/Insurance Company mainly objected to the percentage of disability taken by the Tribunal in awarding the compensation. The learned counsel would submit that though the Medical Board has given the disability certificate for 40%, the Tribunal has taken 70% disability. Since the objection is only with regard to the percentage of disability taken by the Tribunal, we are not inclined to going to the other aspects. In this context, we are fortified by the Judgment of the Honourable Supreme Court in the case of Ajay Kumar Vs.Raj Kumar reported in 2011 ACJ.

8.The learned counsel appearing for the respondent on the other hand, supported the judgment and decree passed by the Tribunal as fair and reasonable and prayed for dismissal of the Civil Miscellaneous Appeal.

9. On careful perusal of Ex.C.1, the Regional Medical Board issued disability certificate for 40%. But the Tribunal without assigning any valid reason observed that 40% disability of the petitioner will affect his avocation upto 70% and thereby fixed the disability of the petitioner at 70%. When the Regional

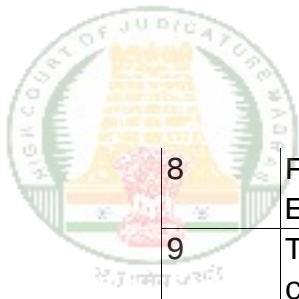


Medical Board itself has examined the petitioner and assessed the percentage of the disability of the petitioner at 40%, 70% disability fixed by the Tribunal for awarding compensation towards loss of earning capacity is unsustainable which needs interference.

10. The learned counsel for the appellant would also submit that the Tribunal has awarded 50% towards future prospects instead of 40%. Following the decisions of Supreme Court, we are of the view that the award of 50% towards future prospects is unsustainable. Accordingly, the same is modified as 40% towards future prospects instead of 50% as taken by the Tribunal. Except the above said modifications, the award passed by the Tribunal under various heads are confirmed.

11. Thus taking a monthly income as Rs.12,000/- and future prospects as 40% would come to Rs.6,800/-. Annual Income comes to (Rs.6,800x12=2,01,600/-), applying multiplier '16' and taking 40% for disability, the loss of earning comes to Rs.12,90,240/-(2,01,600x16x40%). Accordingly, this Civil Miscellaneous Petition is partly allowed. No costs. The compensation awarded by the Tribunal is modified as follows:

| Sl.No | Head under which the amount is awarded | Amount awarded by the Tribunal(in Rs.) | Amount awarded by this Court (in Rs.) | Award confirmed or enhanced or granted |
|-------|----------------------------------------|----------------------------------------|---------------------------------------|----------------------------------------|
| 1     | Pain and Sufferings                    | Rs.50,000/-                            | Rs.50,000/-                           | confirmed                              |
| 2     | Extra Nourishment                      | Rs.50,000/-                            | Rs.50,000/-                           | confirmed                              |
| 3     | Loss of earning                        | Rs.24,19,200/-                         | Rs.12,90,240/-                        | reduced                                |
| 4     | Medical Expenses                       | Rs.4,19,515/-                          | Rs.4,19,615/-                         | confirmed                              |
| 5     | Loss of Amenities                      | Rs.50,000/-                            | Rs.50,000/-                           | confirmed                              |
| 6     | Attender Charges                       | Rs.50,000/-                            | Rs.50,000/-                           | confirmed                              |
| 7     | Damages to cloths                      | Rs.1,000/-                             | Rs.1,000/-                            | confirmed                              |



|   |                         |                                                         |                                                         |                                  |
|---|-------------------------|---------------------------------------------------------|---------------------------------------------------------|----------------------------------|
| 8 | Future Medical Expenses | Rs.70,000/-                                             | Rs.70,000/-                                             | confirmed                        |
| 9 | Transportation charges  | Rs.14,905                                               | Rs.14,905/-                                             | confirmed                        |
|   | Total                   | Rs.31,24,620<br>/- rounded off to<br>Rs.31,24,700<br>/- | Rs.19,95,76<br>0/- rounded off to<br>Rs.20,00,00<br>0/- | Reduced by<br>Rs.11,24,70<br>0/- |

12. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.351 of 2013. On such deposit, the 1<sup>st</sup> respondent/claimant is permitted to withdraw the award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. The appellant/ Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P. No.351 of 2013, if the entire amount has already been deposited.

Sd/-  
Assistant Registrar(J)

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Sub Assistant Registrar

mpa

To

1. The Motor Accident Claims Tribunal,  
V Court of Small Causes, Chennai.
2. The Section Officer,  
Vernacular Records Section,  
High Court, Madras.

+1cc to Mr.R.Thirugnanam, Advocate, S.R.No.28040

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.28210

CMA.No.711 of 2021

PP(CO)  
RLP(12/11/2021)