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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA NO.1574 OF 2011

AND

M.P.NO.1 OF 2011

The New India Assurance Co. Ltd.,
Third party Cell, 69-70, Sheikpet Nadu Street,
Kanchipuram.

... Appellant

Vs.

1. Govindan (died)

... I respondent/Claimant

2. S.Sathiya

... II respondent/I respondent

3. Kuppammal

4. Velmurugan

5. Selvam

... Respondents 3 to 5/
added in the appeal

(Respondents 3 to 5 brought on record as legal heirs of the deceased R1 viz Govindan, vide order dated 16.02.2021 in CMP No.14012, 14029 and 14031 in CMA 1574 of 2011)

Prayer:

Civil Miscellaneous Petitions filed under Section 173 of the Motor Vehicles Act against the decree and judgment dated 03.02.2011 passed in M.C.O.P.No.216 of 2006 by the Additional Subordinate Judge, Motor Accident Claims Tribunal, Chengalpattu.

For Appellant : Mr.M.Krishnamoorthy

For Respondent : notice unserved to R2
R1 - Died

JUDGMENT

Aggrieved over the orders passed by the Tribunal, the Insurance company is before this court to set aside the same.



2. The first respondent/ Claimant has filed a claim petition seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 17.04.2006.

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3. The brief case of the claimants is as follows:

On 17.04.2006, the claimant was walking along G.S.T Road, Kattankulathur and while he was nearing a Petrol bunk, a mini lorry bearing registration NO.TN -32-C-1641 coming from Tambaram to Chengalpattu route, dashed against him on his back side, thereby he sustained fracture and multiple injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the mini lorry was the cause of accident and since the owner of the lorry insured his vehicle with the insurance company, both of them are liable to pay compensation to him.

4. The driver and the owner of the vehicle remained exparte before the Tribunal and the insurance company contested the claim petition by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr. S. Kannan Isac were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P8 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.3,84,500/- under various heads, which is extracted here under.

Sl No	Heads	Amount in Rs.
1	Loss of earning power (300x25 (bearing the Sunday being holiday) x 12 x 8 = 72,20,000 x35%	2,52,000
2	Pain and suffering	25,000
3	Loss of amenities	10,000
4	Loss of income during treatment period and convalescence period (one year)	90,000
5	Transportation charges	2,000
6	Extra nourishment	5,000
7	Damages to clothes	500
	Total	3,84,500



Aggrieved over the above said order, the insurance company has filed the present appeal challenging the quantum of compensation.

7. Pending appeal, the sole claimant died and hence, his legal heirs were impleaded as respondents 3 to 5.

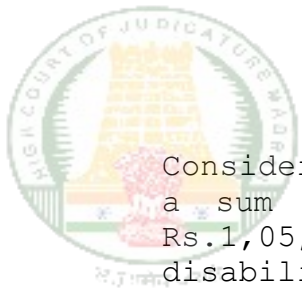
8. The learned counsel appearing for the appellant/ insurance company submitted that the Tribunal has awarded a huge amount as compensation towards loss of earning power without any medical records. He further submitted that the claimant himself stated in his claim petition that his income per day is Rs.100/- and his monthly income for 25 days is Rs.2,500/-, but the Tribunal has fixed the monthly income as Rs.7,500/-, which is erroneous. He also contended that the disability assessed by the Doctor did not speak about the loss of earning power and no proof of income was filed, however, the Tribunal has awarded compensation towards loss of earning power. Therefore, he prayed to set aside the orders passed by the Tribunal.

9. The contention of the claimant in the claim petition is that due to the accident, he has suffered a lot and he was working as a mason and has earned a sum of Rs.300/- per day and due to the accident, he is not able to do his mason work as done earlier and his future earning capacity is totally affected.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down?

11. Point:

The contention of the learned counsel appearing for the appellant is that, without any evidence and materials on record and without any basis, the Tribunal has awarded compensation towards "loss of future earning capacity". As per the decision of the Honourable Supreme Court of India in Raj Kumar Vs. Ajay Kumar & Anr. reported in 2011(1) SCC 343, the Tribunal has to ascertain the actual extent of permanent disability of the claimant based on the medical evidence and it has to determine whether such permanent disability has affected or will affect his earning capacity. Further, the claimant should prove that the disability suffered by him is a permanent and he lost his earning capacity in future. In the light of the above decision, adoption of multiplier method would not arise in this case and therefore, this court accepts the contention of the counsel for the appellant. As per Ex.P7, the Doctor has assessed the disability suffered by the Claimant as 35%. The above said doctor was examined as PW2 and he has also deposed that the claimant has sustained fracture on his left hip and due to the malunion of the fracture, his movement is restricted.



Considering the above said evidence, it is appropriate to award a sum of Rs.3000/- per percentage. Accordingly, a sum of Rs.1,05,000/- (35 x 3000) is awarded towards permanent disability. Further, due to the accident, he would not be able to do his work as earlier atleast for one year. As per the evidence of the claimant as PW1 and the Ex.P6, the Tribunal has rightly fixed the monthly income of the claimant as Rs.300/- and has rightly awarded a sum of Rs.90,000/- towards " Loss of earning capacity during the treatment period" . Inview of the above discussion and also considering the facts of the case, it is appropriate for this court to modify the Award passed by the Tribunal under various heads as extracted hereunder.

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of earning power	2,52,000	1,05,000
2	Pain and sufferings	25,000	25,000
3	Loss of amenities	10,000	15,000
4	Loss of income during treatment period and convalescence period (1 year)	90,000	90,000
5	Transportation charges	2,000	2,000
6	Extra nourishment	5,000	10,000
7	Attender charges	-	10,000
8	Future medical expenses	-	10,000
9	Damages to clothes	500	500
	Total	3,84,500	2,67,500

This amount shall carry interest at the rate of 7.5% per annum.

12. In the result,

(i) The civil miscellaneous appeal is partly allowed and the compensation awarded by the Tribunal is scaled down from Rs.3,84,500/- to Rs.2,67,500. No costs. The connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.2,67,500/- along with



interest at the rate of of 7.5% per annum from the date of claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order, less the amount if already deposited.

(iii) On such deposit being made by the insurance company, the third respondent (Kuppammal) is entitled to get Rs.67,500/- and the fourth and fifth respondents (Velmurugan and Selvam) are entitled to get Rs.1,00,000/- each, after following due process of law.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mst

To

The Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Chengalpattu.

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.15724

CMA No.1574 of 2011 and
M.P.No.1 of 2011

VGII(CO)
RLP(15/02/2022)