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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2463 and 2464 of 2015
and
MP Nos.1 and 1 of 2015

M/s.New India Assurance Co. Ltd.
Divisional Office
Sri Vari Shopping Mall,
2nd Floor,
No.2/91,
New Bus Stand Road,
Meyyanur,
Salem - 636 004.

.... Appellant in both appeals/
Respondent II

Versus

1. Venkatesan	... 1st Respondent in CMA No.2463 of 2015/ Petitioner
1.Pachaiyappan	... 1st Respondent in CMA No.2464 of 2015/ Petitioner
2. P.Thirumalai	..2 nd Respondent in both appeals/1 st Respondent

Prayer in CMA No.2463 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P. No.2900 of 2013 on 16.02.2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri.

Prayer in CMA No.2464 of 2015 : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in M.C.O.P. No.2901 of 2013 on 16.02.2015 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Krishnagiri.

For Appellant in both appeals : Mr.J.Chandran
For Respondent in both appeals : Mr.M.Selvam



COMMON JUDGMENT

These appeals have been filed by the Insurance Company challenging the common award dated 16.02.2015 passed by the Motor Accident Claims Tribunal (Special Sub Judge), Krishnagiri in MCOP Nos.2900 of 2013 and 2901 of 2013.

2. The appellant has challenged the impugned award primarily questioning the quantum of compensation fixed by the Tribunal as according to them, the Tribunal has erroneously applied the multiplier method in assessing the compensation payable to the respective claimants.

3. The first respondent in CMA No.2463 of 2015 is the claimant in MCOP No.2900 of 2013 and the first respondent in CMA No.2464 of 2015 is the claimant in MCOP No.2901 of 2013. Both the claimants sustained injuries as a result of a collision between the two wheeler in which they were travelling as a rider and a pillion rider respectively with a car insured with the appellant.

4. Heard Mr.J.Chandran, learned counsel for the appellant /Insurance Company and Mr.M.Selvam, learned counsel for the respondents 1 and 2.

5. This Court has perused and examined the impugned award as well the materials and evidence available on record before the Tribunal.

6. The accident happened on 07.02.2013 and the first respondent (Venkatesan) in CMA No.2463 of 2015 was aged 30 years and the first respondent in CMA No.2464 of 2015 was aged 36 years at the time of the accident.

7. The first respondent in CMA No.2463 of 2015 had sustained the following injuries, as a result of the accident :

1. Laceration right foot 4 x 1 x 1 cm
2. Abrasion right knee 2 x 2 cm
3. Tender over Left fore arm
4. Right Leg C Ankle Medial Mallolus (undisplaced), as per X-ray
5. Left Wrist - Distal radius (undisplaced) as per X-ray

8. The first respondent in CMA No.2464 of 2015 had sustained the following injuries as a result of the accident :

1. Soft tissue injury of Face, Neck & Chest.
2. Fracture of Shaft of Right Femur, Distal Third Tibia and Fibula Fracture.

9. Before the Tribunal both the claimants have filed documents, which were marked as Exs.P1 to P13, which



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included the wound certificate, Discharge summary, CT Scan, X-rays and disability certificates issued by the Doctor. Three witnesses were also examined on the side of the claimants which included the respective claimants and their Doctor Dr.M.Devendran as PW3. However on the side of the appellant / Insurance Company, neither any document was filed nor any witness was examined.

10. As seen from the discharge summary, the respective claimants were hospitalised for a long period of time. The claimant Venkatesan was aged 30 years and was self employed making pots, allied articles and technician of handicrafts & Mason. In his claim petition, he has claimed that he was earning a sum of Rs.10,000/- p.m. at the time of the accident. However, the Tribunal has assessed the monthly income of Venkatesan as Rs.5000/-. No contra evidence was also produced by the appellant Insurance Company before the Tribunal to disprove the contention of the claimant that he was earning Rs.10,000/-p.m. Therefore, after giving due consideration to the year of the accident, this Court is of the considered view that fixation of Rs.5000/-p.m. as notional income of Venkatesan, 1st respondent in CMA No.2463 of 2015 cannot be considered to be excessive as alleged by the appellant.

11. The Doctor has also taken into consideration the nature of injuries sustained by Venkatesan as indicated above and has assessed the disability of Venkatesan at 55%. However, the Tribunal has reduced the disability to 45%. This Court after giving due consideration to the nature of the injuries sustained by Venkatesan is of the considered view that fixation of 45% disability by the Tribunal cannot be considered to be excessive and hence, the same is confirmed by this Court. The Tribunal after giving due consideration to the grievous injuries sustained by Venkatesan has also come to the conclusion that Venkatesan has lost his earning capacity due to the injuries and accordingly has applied the multiplier method for assessing the loss of earnings. This Court is in agreement with the view taken by the Tribunal. Hence, the contention of the appellant that multiplier method ought not to have been adopted is rejected by this Court. The Tribunal has also applied the correct multiplier of 15 after giving due consideration to the age of Venkatesan.

12. The Tribunal has awarded a compensation of Rs.50,000/- towards pain and suffering; Rs.25,000/- towards Nutrition and Transport; Rs.5,000/- towards Attender charges; Rs.25,000/- towards partial loss of income and Rs.30,000/- towards loss of amenities and discomfort of life and an overall compensation of Rs.5,40,000/- has been awarded to Venkatesan, the



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claimant in MCOP No.2900 of 2013. This Court is of the considered view that considering the year of the accident and the nature of injuries sustained by Venkatesan and the period of his hospitalisation, the overall compensation of Rs.5,40,000/- awarded to him cannot be considered to be excessive as alleged by the appellant. Hence CMA No.2463 of 2015 filed by the appellant does not deserve any merit and the same will have to be dismissed.

13. Insofar as CMA No.2464 of 2015 is concerned, the claimant is Pachiappan, who was the rider of the two wheeler and the Tribunal under the impugned common award directed the appellant to pay him a compensation of Rs.12,52,772/- for the injuries sustained by him as a result of the accident caused by a vehicle insured with the appellant

14. In the claim petition, Pachiappan has claimed that he was self employed making pots and allied articles and Technician of handicrafts and Mason, aged 36 years and was earning Rs.10,000/-p.m., at the time of the accident. However, the Tribunal has fixed the notional monthly income of the Pachiappan only at Rs.5,500/-. The accident happened in the year 2013 and therefore, this Court is of the considered view that fixation of notional monthly income of Pachiappan at Rs.5,500/- cannot be considered to be excessive as alleged by the appellant. Pachiappan has sustained grievous injuries as a result of the accident which are stated supra.

15. Before the Tribunal, the disability certificate of Pachiappan discloses that he suffered 70% disability. However, the Tribunal has reduced the same to 65%. The Tribunal after giving due consideration to the grievous injuries sustained by Pachiappan based on the materials available on record which included the wound certificate, Discharge summary, CT Scan, medical bills, X-rays and disability certificates came to the right conclusion that Pachiappan suffered loss of earnings due to the injuries sustained by him as a result of the accident. This Court is in agreement with the view taken by the Tribunal. The Tribunal has also adopted the correct multiplier of 15 after giving due consideration to the age of Pachiappan at the time of the accident. The loss of earnings fixed by the Tribunal at Rs.6,43,500/- for Pachiappan is also a correct assessment and does not call for any interference by this Court.

16. The Tribunal has also awarded a compensation of Rs.75,000/- towards pain and suffering; Rs.30,000/- towards nutrition and transportation; Rs.30,000/- towards Attender charges; Rs.30,000/- towards Partial loss of income; Rs.2,66,272/- towards medical expenses based on bills produced by Pachiappan; Rs.1,00,000/- towards



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future medical expenses and Rs.75,000/- towards loss of amenities & enjoyment of life and has in all granted a total compensation of Rs.12,52,272/- to Pachiappan, which in the considered view of this Court cannot be considered to be excessive, considering the nature of injuries sustained by Pachiappan. Therefore, the contention of the appellant that the Tribunal has erroneously adopted the multiplier method for Pachiappan and the compensation awarded by the Tribunal under various heads is excessive is rejected by this Court and thus the appeal filed by the appellant does not deserve any merit and the same will have to be dismissed.

17. For the foregoing reasons this Court does not find any infirmity in the findings of the Tribunal. Therefore, there is no merit in these appeals and accordingly, the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

18. The appellant / Insurance Company is directed to deposit the entire award amount awarded by the Tribunal together with interest from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of respective M.C.O.P. Nos.2900 and 2901 of 2013 respectively, on the file of the Motor Accident 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 directly to the bank account of the first respondent in CMA No.2463 and 2464 of 2015, through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar(cs I)

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Sub Assistant Registrar

vsi2

To

1. The Special Sub Judge

Motor Accidents Claims Tribunal, Krishnagiri.

2. The Section Officer, V.R. Section, High Court of Madras,
Chennai - 104.

+2 ccs to Mr.M.Selvam, Advocate Sr.NO. 23728, 23729

C.M.A.Nos.2463 and 2464 of 2015

VSR(CO)

A.SK(01.12.2021)