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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.Nos.2906 and 2907 of 2015

C.M.A.No.2906 of 2015

Divisional Manager, Oriental Insurance Co. Ltd.,
No.12-A, PLA Building, First floor, Kovai Road,
Karur - 639 002. ...Appellant/2nd Respondent

Vs

1.Narayanan ...1st Respondent/Petitioner
2.Subbathal
3.Bharathi ...2nd & 3rd Respondents/3 & 4 Respondents

(1st respondent before the tribunal passed away during trial.
Hence he is not shown in the array of parties)

C.M.A.No.2907 of 2015

Divisional Manager, Oriental Insurance Co. Ltd.,
No.12-A, PLA Building, First floor, Kovai Road,
Karur - 639 002. ...Appellant/2nd Respondent

Vs

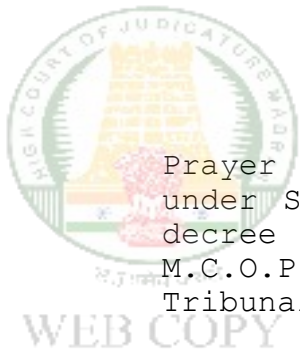
1.Ramesh ...1st Respondent/Petitioner
2.Subbathal
3.Bharathi ...2nd & 3rd Respondents/3 & 4 Respondents

(1st respondent before the tribunal passed away during trial.
Hence he is not shown in the array of parties)

Prayer in CMA No.2906 of 2015: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29th day of October, 2014, made in M.C.O.P.No.278 of 2012, on the file of Motor Accident Claims Tribunal (Additional District Court), Namakkal.

For Appellant : Mr.K.Vinod

For Respondents : Mr.T.Gobinath for R1
R2 & R3 - unclaimed



Prayer in CMA No.2907 of 2015: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29th day of October, 2014, made in M.C.O.P.No.279 of 2012, on the file of Motor Accident Claims Tribunal (Additional District Court), Namakkal.

For Appellant : Mr.K.Vinod

For Respondents : Mr.T.Gobinath for R1
R2 & R3 - unclaimed

C O M M O N J U D G M E N T

These appeals have been filed by the Insurance Company challenging the quantum of compensation awarded to the respective claimants by the Motor Accident Claims Tribunal (Additional District Court), Namakkal in MCOP.No.278 of 2012 and MCOP.No.279 of 2012.

2.Since these appeals arise out of the very same accident, these appeals are disposed of by a common judgment.

3.The details of the compensation awarded to the respective claimants in MCOP.No.278 of 2012 and MCOP No.279 of 2012 are detailed hereunder:

MCOP.No.278 of 2012 - corresponds to CMA No.2906 of 2015

Particulars	Award Amount (Rs.)
Loss of income 6,000x12x16x 45/100	5,18,400
Medical bills	97,568
Extra nourishment	10,000
Pain and suffering	50,000
Transportation	10,000
Attender charges	10,000
Loss of future prospects	20,000
Total	Rs.7,15,968/-
The same is rounded off to Rs.7,16,000/-	

MCOP.No.279 of 2012 corresponds to CMA No.2907 of 2015



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Particulars	Award Amount (Rs.)
Loss of income 10,000x12x16x 40/100	7,68,000
Medical bills	78,447
Extra nourishment	10,000
Pain and suffering	50,000
Transportation	10,000
Attender charges	10,000
Loss of future prospects	20,000
Total	Rs.9,46,447/-
The same is rounded off to Rs.9,46,400/-	

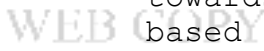
4.The Appellant / Insurance Company has challenged the impugned Award only on the ground that the quantum of compensation awarded to the respective claimants is excessive.

5.Insofar as MCOP No.278 of 2012 which corresponds to CMA.No.2906 of 2015 is concerned, the claimant Narayanan sustained a fracture on his left leg as well as his left hand as a result of an accident caused by a vehicle on 09.12.2011 insured with the Appellant. The Doctor has assessed the disability of the claimant Narayanan at 45%.

6.No evidence has been adduced by the claimant (Narayanan) before the Tribunal to prove that due to the injuries sustained by him, he lost his future earning capacity. The discharge summary and wound certificate as well as the assessment made by the Doctor in the disability certificate also do not reveal that the claimant (Narayanan) would have suffered loss of future earning capacity as a result of injuries sustained by him.

7.Without any basis, the Tribunal has adopted the multiplier method for assessing the disability compensation to the claimant (Narayanan) and without there being any evidence available on record, that Narayanan (claimant) has suffered loss of earning capacity.

8.This Court after giving due consideration to the nature of injuries sustained by the claimant (Narayanan) and his avocation is of the considered view that the Tribunal ought to have assessed the disability compensation only on percentage basis and ought not to have adopted the multiplier method. Hence, this Court sets aside the compensation awarded by the claimant (Narayanan) towards loss of earning capacity at Rs.5,18,400/- and instead awards disability compensation of Rs.1,35,000/-



9. The Tribunal has awarded a compensation of Rs.97,568/- towards medical expenses to the claimant (Narayanan) which is based on the medical bills produced by the claimant and therefore, the same is confirmed by this Court.

11.The Tribunal has erroneously failed to Award any compensation towards loss of income during the period of claimant's treatment, which he is legally entitled to.

13. For the foregoing reasons, the compensation awarded by the Tribunal to the claimant in MCOP.No.278 of 2012 who is the first respondent in CMA.No.2906 of 2015 is reduced from Rs.7,16,000 to 4,07,600/- as detailed hereunder:

Particulars	Award Amount (Rs.)	Reduced Amount (Rs.)
Loss of earning capacity	5,18,400	-
Disability (45%)	-	1,35,000
Medical bills	97,568	97,568
Extra nourishment	10,000	15,000
Pain and suffering	50,000	50,000
Transportation	10,000	15,000
Attender charges	10,000	15,000



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Particulars	Award Amount (Rs.)	Reduced Amount (Rs.)
Loss of amenities	20,000	20,000
Loss of income (10,000 x6)	-	60,000
Total	Rs.7,15,968/-	Rs.4,07,568/-
The same is rounded off to Rs.7,16,000/-		Rs.4,07,600/-

14.Insofar as the compensation awarded to the claimant in MCOP.No.279 of 2012 which corresponds to CMA.No.2907 of 2015 is concerned, this Court is of the considered view that the compensation awarded by the Tribunal is excessive and has to be reduced for the following reasons:

(a)The claimant Ramesh sustained both bone fracture on his right leg.

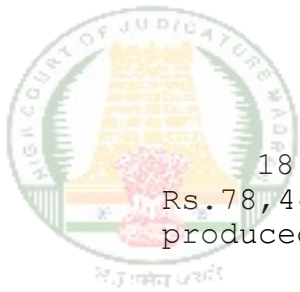
(b)No evidence has been adduced by the claimant Ramesh before the Tribunal to prove that due to the injuries sustained by him, he has lost his future earning capacity as a result of an accident.

(c)The claimant (Ramesh) claims to be a Software Engineer but no document was produced before the Tribunal in support of his avocation.

15.The Tribunal has fixed the monthly income of Ramesh on notional basis at Rs.10,000/-. The discharge summary and the wound certificate which were marked as Exhibits before the Tribunal also do not reveal that the claimant (Ramesh) would have suffered loss of earning capacity as a result of the injuries sustained by him.

16.Without any basis, the Tribunal has awarded a huge compensation of Rs.7,68,000/- to the claimant (Ramesh) and therefore, the same will have to be set aside by this Court and instead the claimant (Ramesh) will have to be awarded compensation towards his disability only on percentage basis. The Doctor has assessed the disability of the claimant (Ramesh) at 40%.

17.The accident happened on 09.12.2011. After giving due consideration to the year of the accident, this Court fixes the disability compensation of the claimant (Ramesh) at Rs.1,20,000/- calculated at Rs.3,000-/ per percentage of disability for the 40% disability.



18.The Tribunal has rightly awarded a compensation of Rs.78,447/- towards medical expenses based on the medical bills produced by the claimant (Ramesh).

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19.The Tribunal has also rightly awarded a compensation of Rs.50,000/- towards pain and suffering, Rs.20,000/- towards loss of amenities, which is also confirmed by this Court.

20.However, the Tribunal has awarded a lesser compensation towards extra nourishment, transportation and attender charges which has to be necessarily enhanced after giving due consideration to the nature of injuries sustained by the claimant (Ramesh). Accordingly, this Court enhances the compensation towards extra nourishment from Rs.10,000/- to Rs.20,000/-, towards transportation from Rs.10,000/- to Rs.20,000/- and towards attender charges from Rs.10,000/- to Rs.20,000/-.

21.The Tribunal also erroneously failed to Award any compensation towards loss of income to the claimant (Ramesh) during the period of his treatment. After giving due consideration to the nature of injuries sustained by the claimant (Ramesh), this Court is of the considered view that atleast for a period of six months, the claimant (Ramesh) would not have been able to do his regular employment. Hence, this Court Awards a compensation of Rs.72,000/- to the claimant (Ramesh) towards loss of income calculated at Rs.12,000/- per month for a period of six months.

22.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award who is the claimant in MCOP.No.279 of 2012 which corresponds to MCOP.No.2907 of 2015 is reduced from Rs.9,46,400/- to Rs.3,73,400/-as detailed hereunder:

Particulars	Award Amount (Rs.)	Reduced Amount (Rs.)
Loss of earning capacity	7,68,000	-
Disability (40%)	-	1,20,000
Medical bills	78,447	78,447
Extra nourishment	10,000	15,000



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Particulars	Award Amount (Rs.)	Reduced Amount (Rs.)
Pain and suffering	50,000	50,000
Transportation	10,000	15,000
Attender charges	10,000	15,000
Loss of amenities	20,000	20,000
Loss of income (10,000 x6)	-	60,000
Total	Rs.9,46,447/-	Rs.3,73,477/-
The same is rounded off to Rs.9,46,400/-		Rs.3,73,400/-

23. In the result, both appeals are partly allowed. The compensation awarded by the Tribunal in MCOP.No.278 of 2012 is reduced to Rs.4,07,600/- from Rs.7,16,000 /- along with interest and costs assessed by the Tribunal as well as the compensation awarded by the Tribunal in MCOP.No.279 of 2012 is reduced to Rs.3,73,400/- from Rs.9,46,400/- along with interest and costs as fixed by the Tribunal.

24. The Appellant Insurance company is directed to deposit the modified compensation amount of Rs.4,07,600 /- together with interest at the rate of 7.5% per annum as assessed by the Tribunal from the date of claim till the date of deposit, after deducting the amount already deposited if any to the credit of MCOP.No.278 of 2012 and also directed to deposit another sum of Rs.3,73,400 /- as compensation together with interest at the rate of 7.5% per annum as assessed by the Tribunal from the date of claim till the date of deposit, after deducting the amount already deposited if any to the credit of MCOP.No.279 of 2012 within a period of four weeks from the date of receipt of a copy of this common judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the credit of MCOP.No.278 of 2012 to the bank account of the first respondent/claimant in CMA.No.2905 of 2015 and also transfer the amount lying to the credit of MCOP.No.279 of 2012 to the bank account of the claimant/first respondent in CMA.No.2907 of 2015 through RTGS within a period of one week thereafter.

25. If the Appellant Insurance company has already deposited the compensation amount before the Tribunal, they are permitted



to withdraw the excess amount if any, deposited by them before the Tribunal by filing an appropriate application. No costs.

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Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal
(Additional District Court),
Namakkal.
2. The Section Officer
V.R.Section,
High Court of Madras.

+2ccs to M/s.Elveera Ravindran, Advocate, Sr.No.26306,26307

C.M.A.Nos.2906 and 2907 of 2015

CA[co]
NSK 01/11/2021