



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
04.02.2021

Date of Pronouncing Judgment
17.03.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.2414 & 2415 of 2016
and
C.M.P.Nos.16891 & 16892 of 2016

C.M.A.No.2414/2016

The New India Assurance Company Ltd.,
Motor Third Party Cell,
45, Moore Street, Chennai - 1.

.. Appellant/2nd Respondent

Vs.

1. Anandan

.. 1st Respondent/Claimant

2. V. Ettikkan

.. 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 15.02.2016, passed in M.C.O.P.No.11/2010 on the file of Motor Accident Claims Tribunal, (II-Court of Small Causes) Chennai.

For Appellant : Mr. Udayasankar

For Respondents : Ms. A. Subadra
for Mrs. M. Malar, for R1

R2 - Ex parte

C.M.A.No.2415/2016

The New India Assurance Company Ltd.,
Motor Third Party Cell,
45, Moore Street, Chennai - 1.

.. Appellant/2nd Respondent

Vs.

1. Pandiyan

.. 1st Respondent/Claimant

2. V. Ettikkan

..2nd Respondent/1st Respondent



Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 15.02.2016, passed in M.C.O.P.No.12/2010 on the file of Motor Accident Claims Tribunal, (II-Court of Small Causes) Chennai.

For Appellant : Mr. Udayasankar
For Respondents : Ms. A. Subadra
for Mrs. M. Malar, for R1
R2 - Ex parte

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

In both the appeals, the Insurance Company is the appellant. Both the appeals are arising out of the common award passed in M.C.O.P.Nos.11 & 12 of 2010 respectively filed by one Pandiyan and Anandan respectively, who are the injured and hence, arguments were heard in common and common judgment is passed.

2. The appellant-Insurance Company has filed both the appeals only on the point of quantum. The factum of the accident; manner of the accident and the negligence on the part of the driver of the second respondent are not under challenge. In both the cases, P.W.3 Doctor-Thiyagarajan had examined the claimants but he is not a Doctor, who had treated the claimants. On a perusal of the evidence of P.W.3-Doctor, it appears that the Doctor has examined the injured/claimants only after 8 years from the date of the accident also assumes significance.

C.M.A.No.2414/2016 - (MCOP.No.11/2010) - (Anandan)

3. The petitioner was admitted to JIPMER Hospital and he had taken treatment for 8 days as in-patient and he was diagnosed for head injury with fracture of frontal bone, fracture of left knee of lateral condyle and dislocation of left wrist for which he was treated as per neuro advice and fracture and dislocation were manipulated and mobilised as per ortho advise. Ex.P.5 Scan report of brain also shows that fracture of frontal bone with concussion of brain. To prove the same, the petitioner has produced Ex.P4 Discharge Summary JIPMER Hospital, Pondicherry.

4. As per evidence of the Doctor, the petitioner sustained head injury with fracture of frontal bone, fracture of



left knee of lateral condyle and dislocation of left wrist for which 30% for post traumatic head ache, giddiness tremors (L) hand and leg. He is having memory deficit, 35% for malunited fracture of left maxilla and fracture of left knee of lateral condyle tibia, flexion of left knee 80', he is having difficulty to work and carry weights with left hand. Totally PW3 assessed the disability as 80% which is partial and permanent in nature and issued Ex.P9 Disability Certificate.

5. Considering the nature of the injuries sustained by the petitioner as spoken to by the Doctor and as reflected in the Discharge Summary-Ex.P4 coupled with Ex.P9-Disability Certificate, I find that the disability of 80%, which is partial and permanent in nature, as fixed by the Tribunal and awarding of a sum of Rs.2,40,000/- under the head of partial and permanent disability by fixing a sum of Rs.3000/- per percentage of disability does not suffer from any irregularity nor excessive, and hence, the amount awarded under the said head is confirmed. Further, I find that the Tribunal has also awarded a sum of Rs.3,51,000/- towards loss of future earning capacity. On a perusal of the oral evidence of P.W.1 coupled with the evidence of P.W.3 and Discharge Summary-Ex.P4, I find that the Tribunal has over stepped into the area where there was no evidence to show that due to the disability suffered by the claim petitioner, he has lost his future earning capacity. In the absence of any positive evidence or indication on the medical records, the award amount of a sum of Rs.3,51,000/- passed by the Tribunal under the head of loss of future earning capacity is liable to be vacated and thus, the compensation is re-assessed as under:-

6. Transportation charges:-

The Tribunal has awarded Rs.25,000/- towards Transportation, nourishing food and miscellaneous expenditure. The said sum is reduced to Rs.10,000/- towards transportation charges.

7. Nutrition and extra Nourishment:-

The Tribunal has awarded Rs.25,000/- towards Transportation, nourishing food and miscellaneous expenditure. The said sum is reduced to Rs.10,000/-.

8. Medical Expenses:-

The tribunal has awarded a sum of Rs.20,000/- towards medical expenses and the same is confirmed.

9. Attendant Charges:-

The tribunal has awarded a sum of Rs.5,000/- towards attendant charges and the same is confirmed.



10. Disability:-

The tribunal has awarded a sum of Rs.2,40,000/- towards disability and the same is confirmed.

11. Loss of earning during the period of treatment:-

The tribunal has awarded a sum of Rs.26,000/- towards loss of earning during the period of treatment and the same is confirmed.

12. Pain and sufferings:-

The tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings. The said sum is reduced to Rs.25,000/-.

13. Loss of amenity:-

The tribunal has awarded a sum of Rs.20,000/- towards loss of amenities. The said sum is reduced to Rs.10,000/-.

14. Hence, award amount of a sum of Rs.7,43,000/- as ordered by the tribunal stands reduced to Rs.3,46,000/-.

15. Consequently, the total compensation amount of Rs.7,43,000/- awarded by the Tribunal is hereby modified and reduced to Rs.3,46,000/-. The appellant / New India Assurance Company is directed to deposit the aforesaid modified compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 15.02.2016, passed in M.C.O.P.No.11/2010, stands modified and C.M.A.No.2414/2016 stands allowed in part. Consequently connected miscellaneous petition is closed.

CMA-2415 of 2016, (MCOP.No.12/2010) (Pandiyan)

16. P.W.3 Doctor would point out that the petitioner had sustained fracture of left frontal bone with cerebral edema, fracture of right clavicle and dislocation of right wrist for which 30% for post traumatic head ache, giddiness tremors ® hand and leg. He is having memory deficit, 25% for malunited fracture of right clavicle fibrosis muscles, abduction 80', IRER 50' limited, he is having difficulty to work and carry weights with right hand and 15% for fibrosis of right wrist - DFPF 50' restricted, he has difficulty to work. Totally PW3 assessed the disability as 70% which is partial and permanent in nature and issued Ex.P11 Disability Certificate.

17. Taking into consideration the oral evidence of P.W.3- Doctor coupled with the Discharge Summary-Ex.P7 and the



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Disability Certificate-Ex.P11 issued by P.W.3 along with Ex.P.13-Photograph, I find that the disability of 70% arrived at by the Tribunal is just and proper and hence, the award amount of Rs.2,10,000/- by fixing a sum of Rs.3,000/- per percentage of disability cannot be treated as excessive and the amount awarded by the Tribunal under the said head is confirmed. However, in the absence of any positive evidence to show that the injured/claimant has suffered loss of earning capacity due to the injuries sustained in the accident and also in the absence of any indication in the medical records, the award amount of Rs.3,51,000/- under the head of loss of future earning capacity and a sum of Rs.6,000/- awarded by the Tribunal under the head of future medical expenses are hereby stands vacated and hence, the compensation stands modified after re-assessment as under:

18.Transportation, nourishing food and miscellaneous expenditure:-

The Tribunal has awarded a sum of Rs.25,000/- towards transportation, nourishing food and miscellaneous expenditure and the same are confirmed.

19.Medical expenses:-

The Tribunal has awarded a sum of Rs.20,000/- towards medical expenses and the same is confirmed.

20.Attendant Charges:-

The tribunal has awarded a sum of Rs.5,000/- towards attender charges and the same is confirmed.

21.Disability:-

The tribunal has awarded a sum of Rs.2,10,000/- towards disability and the same is confirmed.

22.Loss of earning during the period of treatment:-

The tribunal has awarded a sum of Rs.26,000/- towards loss of earning during the period of treatment and the same is confirmed.

23.Pain and sufferings:

The tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings and the same is confirmed.

24.Loss of amenities:-

The tribunal has awarded a sum of Rs.20,000/- towards loss of amenities and the same is confirmed.

25. Hence, award amount of a sum of Rs.7,13,000/- as ordered by the tribunal stands reduced to Rs.3,56,000/-.



26. Consequently, the total compensation amount of Rs.7,13,000/- awarded by the Tribunal is hereby modified and reduced to Rs.3,56,000/-. The appellant / New India Assurance Company is directed to deposit the aforesaid modified compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit, the claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 15.02.2016, passed in M.C.O.P.No.12/2010, stands modified and C.M.A.No.2415/2016 stands allowed in part. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

AT

To:

The Motor Accident Claims Tribunal,
(II-Court of Small Causes) Chennai.

Copy to:

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

+2ccs to M/s.M.Malar, Advocate, S.R.No.17174, 17175

+2ccs to M/s.G.Udaya Sankar, Advocate, S.R.No.17783, 17784

Pre-delivery Order in

C.M.A.Nos.2414 & 2415 of 2016 and
C.M.P.Nos.16891 & 16892 of 2016

RSV(CO)
SU(11/10/2021)