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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.2564 of 2016
and C.M.P.No.18374 of 2016

The Oriental Insurance Company Limited,
rep. by its Branch Manager,
No.6, MummyDaddy Complex, Mettu Street,
Tiruthuraipoondi Munsiff and Taluk, Town and Post.
..Appellant/2nd Respondent

Vs

1.Veeraiyan
2.Mathiyazhagan ...Respondents/Petitioner/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 29th day of April, 2015, made in M.C.O.P.No.27 of 2012, on the file of the Motor Accident Claims Tribunal, (Sub Court), Mannargudi.

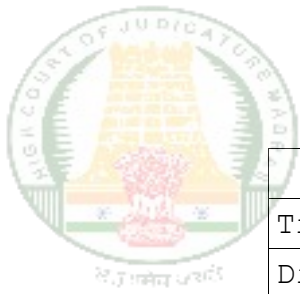
For Appellant : Mr.K.Vinod
For Respondents : Mr.D.Lakshmipathy for R1
R2 - Refused

J U D G M E N T

This appeal has been filed by the Insurance Company challenging the Award dated 29.04.2015 passed by the Motor Accident Claims Tribunal, (Sub Court), Mannarkudi, in M.C.O.P.No.27 of 2012.

2.The Appellant Insurance Company has challenged the impugned Award questioning the quantum of compensation awarded by the Tribunal as according to them, the same is excessive.

3.The Tribunal under the impugned Award directed the Appellant Insurance Company to pay the first respondent/claimant a compensation of Rs.2,75,800/- together with interest and costs as detailed hereunder:



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Particulars	Amount (Rs.)
Transportation	5,000
Disability (20%)	40,000
Attender charges	3,000
Loss of earning capacity	1,72,800
Pain and suffering	25,000
Extra nourishment	15,000
Medical expenses	15,000
Total	Rs.2,75,800/-

4.Heard Mr.K.Vinod, learned counsel for the Appellant and Mr.D.Lakshmipathy, learned counsel for the first respondent.

5.The main contention raised by the Appellant Insurance Company is that the Tribunal ought not to have adopted the multiplier method for the purpose of assessing compensation to the first respondent/claimant towards loss of earning capacity.

6.The first respondent/claimant has sustained left clavicle fracture as a result of an accident on 29.03.2011 caused by a vehicle insured with the Appellant. The nature of injuries sustained by the first respondent/claimant as indicated above has not been disputed by the Appellant Insurance Company as seen from the evidence available on record.

7.The Doctor who was examined as PW2 has assessed the disability of the first respondent/claimant at 20%. However, despite the fact that the nature of injuries sustained by the first respondent/claimant is only left clavicle fracture the Tribunal has erroneously adopted the multiplier method and assessed the compensation payable to the first respondent/claimant towards loss of earning capacity at Rs.1,72,800/-. This Court is of the considered view that the said assessment made by the Tribunal towards loss of earning capacity is an erroneous assessment and will have to be set aside as the first respondent/claimant is only entitled for disability compensation based on his actual disability.

8.The Tribunal ought to have awarded only disability compensation to the victim, but in addition to the same has also awarded compensation towards loss of earning capacity to the first respondent/claimant which he is not legally entitled to. However, the Tribunal failed to take into consideration year of the accident for fixing the disability compensation. The accident happened on 29.03.2011. The Tribunal has assessed the



disability compensation for 20% disability suffered by the first respondent/claimant at Rs.40,000/- calculated at Rs.2,000/- per percentage of disability which in the considered view of this Court is low and it has to be necessarily enhanced.

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9.After giving due consideration to the year of the accident, this Court fixes the disability compensation of the first respondent/claimant at Rs.60,000/- calculated at Rs.3,000/- per percentage of disability instead of Rs.2,000/- per percentage of disability fixed by the Tribunal.

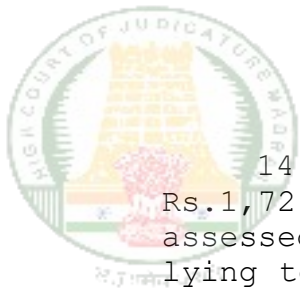
10.The Tribunal has also awarded a lesser compensation towards transportation and attender charges which has to be necessarily enhanced to Rs.10,000/- and Rs.5,000/- respectively.

11.The Tribunal has also failed to award any compensation towards loss of income during the period of treatment to the first respondent/claimant. Considering the nature of injuries sustained by the first respondent/claimant, this Court fixes the same at Rs.42,000/- calculated at Rs.7,000/- per month for a period of six months.

12.The Tribunal has awarded a compensation of Rs.25,000/- towards pain and suffering, Rs.15,000/- towards extra nourishment charges and Rs.15,000/- towards medical expenses. The same is confirmed by this Court.

13.For the foregoing reasons, the compensation awarded by the Tribunal under the impugned Award is reduced by this Court from Rs.2,75,800 to Rs.1,72,000 as detailed hereunder:

Particulars	Award Amount (Rs.)	Reduced/ modified Amount
Transportation	5,000	10,000
Disability (20%)	40,000	60,000
Attender charges	3,000	5,000
Loss of earning capacity	1,72,800	-
Pain and suffering	25,000	25,000
Extra nourishment	15,000	15,000
Medical expenses	15,000	15,000
Loss of income (Rs.7,000 x 6 months)	-	42,000
Total	Rs.2,75,800/-	Rs.1,72,000/-



14. The compensation awarded by the Tribunal is reduced to Rs.1,72,000/- from Rs.2,75,800/- along with interest and costs assessed by the Tribunal. The Tribunal shall transfer the amount lying to the credit of MCOP.No.27 of 2012 to the bank account of the first respondent/claimant through RTGS, within a period of one week thereafter. The Appellant Insurance Company is permitted to withdraw the excess amount if any, deposited by them before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pam

To

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Mannargudi.

Copy to :
The Section Officer
V.R.Section, High Court of Madras.

+1CC to Mrs.Elveera Ravindran, Advocate, Sr.No.25596

C.M.A.No.2564 of 2016

KK (CO)
K.RK. (28.09.2021)