IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.2675 of 2016 in
CMP.No.19078 of 2016

The Iffco Tokio General Insurance Co.Ltd.,
Having its branch office at
No.16, Venkatarama Round Road,
Mahalingapuram,
Pollachi - 642 002.

...Appellant/3rd Respondent

versus

1. S.Subramani ..Respondent/Petitioner
2. T.K.Aravindh Rajasekar
3. T.K.Arun Prasath

...Respondents/1 & 2 Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree passed in MCOP.No.166 of 2015 dated 08.06.2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Erode.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates.

For Respondents : M/s.R.Nalliyappan for R1.
R2 and R3 - No appearance.

JUDGMENT
(This case has been heard through Video Conference)

This appeal has been filed by the insurance company challenging the award dated 08.06.2016 passed by the MACT, Special Subordinate Court, Erode in MCOP.No.166 of 2015.

2. The appellant/insurance company has challenged the impugned award on the ground that the quantum of compensation awarded by the Tribunal to the 1st respondent/claimant is excessive. According to them, the Tribunal has erroneously

awarded compensation under the heads disability compensation as well as loss of earning capacity which will amount to duplication. They have also challenged the quantum of compensation awarded by the Tribunal under various other heads also.

3. The Tribunal under the impugned award had directed the appellant/insurance company to pay the first respondent/claimant a compensation of Rs.11,78,500/- together with interest and cost as detailed hereunder :-

	Headings	Amount in Rs.
1	Loss of Income	80,000
2	Transport expenses	5,000
3	Extra nourishment	24,000
4	Damages for clothes and Articles	500
5	Medical expenses	1,20,600
6	Pain and sufferings	1,00,000
7	Disability	1,62,000
8	Loss of earning power	6,86,400
	Total	11,78,500

4. Before the Tribunal, the first respondent/claimant has filed 39 documents which were marked as Ex.P1 to Ex.P39 and 4 witnesses were examined on his side viz., PW1 to PW4. On the side of the appellant/insurance company neither any document was filed nor any witness examined, before the Tribunal.

5. Before the Tribunal the first respondent/claimant has filed salary slips which have been marked as Exs.P13, P28 and P29. The first respondent/claimant has also filed the extract of the salary register for the months of November and December 2014 and January 2015 which have been marked as Ex.P31 to Ex.P33 before the Tribunal. As seen from the salary slips as well as the salary register and the evidence of PW3, the first respondent/claimant was earning only Rs.2,751/- during November and December 2014 and Rs.4,912/- during January 2015. However, the Tribunal has fixed notional monthly income of the first respondent/claimant at Rs.10,000/- which in the considered view of this Court is on higher side. As an employee, the first respondent/claimant may have got additional incentives/benefits from his employer, but fixing the notional monthly income of

the first respondent/claimant at Rs.10,000/- by the Tribunal, that too, when the first respondent/claimant has produced only documentary evidence to show that he was earning only Rs.4,912/- during January 2015, which is one month prior to the date of the accident, is excessive. Therefore, after giving due consideration to the fact that, the first respondent/claimant would have earned additional benefits/incentives from the company in addition to his actual salary and this Court fixes notional monthly income of the first respondent/claimant at Rs.6,500/- instead of Rs.10,000/- fixed by the Tribunal. This Court is of the considered view that the Tribunal has also erroneously awarded huge compensation towards loss of income during the period of treatment of the first respondent/claimant for a period of eight months which is on the higher side. After giving due consideration to the nature of the injuries sustained by the first respondent/claimant which have not been disputed by the appellant/insurance company, this Court is of the considered view that only for a period of six months, the first respondent/claimant would have been unable to do his regular avocation. Since, this Court has fixed the notional monthly income at Rs.6,500/- instead of Rs.10,000/- fixed by the Tribunal, the compensation towards loss of income during the period of the first respondent/claimant treatment is fixed at Rs.39,000/- calculated at Rs.6,500/-p.m. for a period of six months, instead of Rs.80,000/- fixed by the Tribunal calculated at Rs.10,000/-p.m. for a period of eight months.

6. The Tribunal has also erroneously awarded compensation towards disability at Rs.1,62,000/- despite the fact that in addition to that the Tribunal has separately assessed the compensation towards loss of earning capacity at Rs.6,86,400/- which is not permissible. The Tribunal ought not to have awarded compensation separately under the head disability as well as under the head "loss of earning capacity" which will amount to duplication and therefore, the compensation awarded by the Tribunal under the head of disability has to be set aside by this Court. Accordingly, the same is set aside by this Court.

7. In view of the refixation of the notional monthly income of the first respondent/claimant by this Court at Rs.6,500/- instead of Rs.10,000/- fixed by the Tribunal, the compensation towards loss of earning capacity payable to the first respondent/claimant is reassessed at Rs.4,46,160/- (6,500x12x13x44%) instead of Rs.6,86,400/- (Rs.10,000x12x13x44%) as fixed by the Tribunal.

8. The Tribunal has failed to award any compensation towards loss of amenities to the first respondent/claimant, for which the first respondent is legally entitled to as per the decision of the Hon'ble Apex Court in the case of National Insurance Co. Ltd. vs. Pranay Sethi reported in (2017) 16 SCC 680. After giving due consideration to the nature of the injuries sustained by the first respondent/claimant, this Court fixes the compensation towards loss of amenities at Rs.30,000/-.

9. Similarly, the compensation awarded by the Tribunal towards transportation at Rs.5,000/- and towards damages at Rs.500/- is also low and it has to be enhanced. After giving due consideration to the nature of the injuries sustained by the first respondent/claimant, this Court enhances the compensation towards transportation to Rs.10,000/- and towards damages to clothing to Rs.1,000/-.

10. However, the compensation awarded by the Tribunal under the head of medical expenses and the future medical expenses at Rs.1,20,600/- is confirmed by this Court in view of the fact that the same is supported by medical bills which has been marked as exhibits before the Tribunal.

11. However, this Court is of the considered view that the Tribunal has awarded an excessive compensation towards pain and sufferings at Rs.1,00,000/- which is not in consonance with the nature of the injuries sustained by the first respondent/claimant. If the actual injuries sustained by the first respondent/claimant was taken into consideration, the Tribunal ought not to have granted Rs.1,00,000/- towards pain and suffering. This Court after giving due consideration to the nature of the injuries sustained by the first respondent/claimant reduces the compensation towards pain and suffering from Rs.1,00,000/- to Rs.30,000/-.

12. The Tribunal awarded a compensation of Rs.24,000/- towards extra nourishment which is confirmed by this Court as it cannot be considered to be excessive, if the nature of the injuries and the period of hospitalisation is considered.

13. For the foregoing reasons, the compensation awarded by the Tribunal is reduced from Rs.11,78,500/- to Rs.7,00,760/- rounded off to Rs.7,00,000/- which is detailed hereunder :-

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income10000x8 * 6500x6 #	* 80,000	# 39,000
Transport	5,000	10,000
Extra Nourishment	24,000	24,000
Damages	500	1,000
Medical expenses & future medical expenses	1,20,600	1,20,600
Pain and suffering	1,00,000	30,000
Disability 54% x3,000/- *	* 1,62,000	NIL
Loss of Earning capacity 10,000/- x 12 x 13 x 44% * 6,500 x 12 x13 x 44% #	* 6,86,400	# 4,46,100
Loss of Amenities	NIL	30,000
TOTAL	11,78,500	7,00,760
Rounded off by this Court		7,00,000

14. In the result, the appeal filed by the appellant / insurance company, stands partly allowed by reducing the compensation from Rs.11,78,500/- to Rs.7,00,760/- (Rounded off to Rs.7,00,000/-) as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

15. The appellant / Insurance Company is directed to deposit the entire award amount (reduced amount) as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.166 of 2015 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Erode, within a period of eight 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/claimant, through RTGS, within a period of two weeks thereafter.

16.It is made clear that the appellant / Insurance Company is permitted to withdraw excess award amount, if any deposited by them before the Tribunal.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

tsh

To
1. The Motor Accident Claims Tribunal,
Special Subordinate Court, Erode.

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

CMA No.2675 of 2016

RLD(CO)
SP(08/12/2021)