IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA Nos.834 & 2078 of 2021
and
MP No.11223 of 2021

S. Sudhakar … Appellant in CMA No.834 of 2021
and
1st respondent in CMA No.2078 of 2021

versus

1. A. Girija ... 1st respondent in CMA No.834 of 2021
and
2nd respondent in CMA No.2078 of 2021

2. Reliance General Ins. Co. Ltd.
Reliance House, 6th Floor,
Nungambakkam,
Chennai – 600 006. … 2nd respondent in CMA No.834 of 2021
and
Appellant in CMA No.2078 of 2021

Prayer in CMA No.834 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 12.10.2020 in MCOP No.1688 of 2018 on the file of the Motor Accidents Claims Tribunal (Special Sub Court No.I, Full Additional Incharge of II Small Causes, Chennai).

<u>Prayer in CMA No.2078 of 2021</u>: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 12.10.2020 made in MCOP No.1688 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Chennai.

For Appellant in CMA No.834 of 2021
and 1st respondent in CMA No.2078 of 2021: Mr.R. Nalliyappan

For Appellant in CMA No. 2078 of 2021
and 2nd respondent in CMA No.834 of 2021 : M/s. S. Arunkumar

For R1 in CMA No.834 of 2021
and 2nd respondent in CMA No.2078 of 2021: Served – No appearance

<u>COMMON JUDGMENT</u>
(Heard video conference)

CMA No. 834 of 2021 has been filed by the claimant seeking enhancement of compensation under the impugned award dated 12.10.2020 passed by the Motor Accidents Claims Tribunal (Special Sub Court No.1, Full Additional Incharge of II Court of Small Causes), Chennai and CMA No.2078 of 2021 has been filed by the Insurance Company challenging the very same award questioning the quantum of Compensation awarded by the Tribunal.

2. Since both these appeals arise out of a very same accident, both

these appeals are disposed of by a common judgment.

3. The Tribunal under the impugned award directed the Insurance Company to pay the claimant a compensation of Rs.26,00,100/- as detailed here under :

Heads	*Amount awarded by the Tribunal (Rs.)*
Pecuniary loss	18,90,000
Pain and suffering	40,000
Transportation	5,000
Medical expenses	5,91,563
Extra nourishment	20,000
Attender charges	3,500
Loss of future prospects	50,000
Total	26,00,063
Rounded off	**26,00,100**

4. Heard Mr.R. Nalliyappan, learned counsel for the claimant and Mr.S. Arun Kumar, learned counsel for the Insurance Company.

5. This Court has perused and examined the impugned award before the Tribunal.

6. The claimant S. Sudhakar, the Appellant in CMA No. 834 of 2021 has sustained the following injuries on 18.02.2018 as a result of an accident caused by a vehicle insured with the Appellant in CMA No. 2078 of 2021.

> *Bilatereal superior pubic rami fracture, Right inferior pubic ramus fracture, Bilateral sacral ala fracture, Fracture in posterior aspect of right 4th - 7th ribs, Fracture shaft of right femur and Right proximal tibia fracture (Split fracture of lateral condyle), Crush degloving mangled foot and ankle of right lower limb and Morbid obesity and which resulted in the claimant in right leg Below knee guillotine amputation and the injuries appears to be grievous in nature.*

The nature of injuries sustained by the claimant has not been disputed by the Insurance Company before the Tribunal.

7. However, it is the contention of the Insurance Company that the quantum of compensation awarded by the Tribunal to the claimant is excessive. According to them, the disability assessed by the Tribunal at 70% is excessive and the notional monthly income fixed by the Tribunal is also excessive. According to them, the claims Tribunal ought not to

have fixed a sum of Rs.18,90,000/- as loss of earning capacity to the claimant without any evidence.

8. However, it is the contention of the claimant that the quantum of compensation awarded by the Tribunal is inadequate and is not a just compensation. According to the claimant, he has sustained 100% functional disability as a result of an accident due to the injuries sustained by him and hence the assessment of 70% disability by the Tribunal is not a correct assessment. It is also the contention of the claimant that the Tribunal failed to award any compensation towards loss of future prospects. It is also the contention of the claimant that the compensation awarded by the Tribunal under various heads is not a just compensation and it has to be enhanced.

9. The injuries sustained by the claimant as referred to supra have also not been disputed by the Insurance Company before the Tribunal. The claimant was also hospitalized for a long period of time as seen from the evidence available on record as well as from the impugned award. The period of hospitalization of the claimant which is reflected in the impugned award has also not been disputed by the Insurance Company as seen from the evidence available on record. The injured claimant claims

to be running a Rice Mill. However, before the Tribunal excepting for filing a copy of the licence for running the Rice Mill, which has been marked Exs. P6 and P7, no documentary evidence has been produced to prove his monthly income arising out of the said Rice Mill. Even though, in the claim petition, he has pleaded that he is earning Rs.40,000/- p.m., no documentary evidence has been produced by the claimant before the Tribunal to prove that he was earning Rs.40,000/- p.m. The accident happened in the year 2018. The Tribunal only after taking into consideration the year of the accident and the age of the claimant has assessed the monthly income on notional basis and has fixed the same at Rs.15,000/- which in the considered view of this Court cannot be considered to be unjust as alleged by the claimant.

10. This Court is of the considered view that the said assessment made by the Tribunal is a fair assessment and there is no scope for interference and accordingly the contention of the Insurance Company that the fixation of the notional monthly income at Rs.15,000/- is on a higher side is also rejected by this Court. No documentary evidence has been produced by the claimant to prove that he has suffered a loss of future prospects on account of the injuries sustained by him as a result of an accident.

11. Admittedly, the claimant was a Businessman having his own Rice Mill. If there was a loss of future prospects, the claimant ought have produced Income Tax Returns, Bank Statements or other relevant documents to prove that he had suffered loss of future prospects as a result of the injuries. When no documents having been produced, this Court is of the considered view that the Tribunal has rightly rejected the claim of the claimant for loss of future prospects.

12. Even though, the disability of the claimant assessed by the Tribunal at 70% may be on the higher side, as no sufficient evidence has been placed by the claimant excepting for the production of the disability certificate, this Court after giving due consideration to the overall compensation of Rs.26,00,100/- awarded to the claimant under various heads is of the considered view that the overall compensation cannot be considered to be excessive as alleged by the Insurance Company. In fact, the excess compensation amount awarded by the Tribunal under the head pecuniary loss can be set off under various other heads viz., Pain and Suffering, Transportation, Attender charges and loss of amenities, where this Court is of the considered view that the Tribunal has awarded lesser compensation.

13. Since the overall compensation awarded by the Tribunal at Rs.26,00,100/- is a just compensation, there is no scope for interference with regard to the impugned Award. The contentions raised by the Insurance Company as well as the claimant in the respective Appeals does not deserve any merit. In the result, both these Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14. The Appellant /Insurance Company in CMA No.2078 of 2021 is directed to deposit the entire award amount awarded by the Tribunal 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.1688 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Full Additional Incharge of II Small Causes, Chennai, 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 1st respondent / claimant through RTGS, within a period of two weeks thereafter .

07.09.2021

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To
1. The Judge /
   Full Additional In-charge of
   II Court of Small Causes,
   Special Sub Court No.1,
   Motor Accidents Claims Tribunal
   Chennai.

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

ABDUL QUDDHOSE, J.

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CMA Nos.834 & 2078 of 2021

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