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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.1883 and 1884 of 2018

and

C.M.P.Nos.14533 and 14534 of 2018

C.M.A.No.1883 of 2018:

M/s.Reliance General Insurance Company
Limited,
Chennai .

... Appellant /3rd Respondent

vs

1.K.G.Nataraj
S/o.Ganapathi

...1st Respondent/Petitioner

2.Sambasivarao
S/o.Anjaiah

3.Venkateswararao
S/o.Balaiah

... Respondents 2 & 3/Respondents 1 & 2

C.M.A.No.1884 of 2018:

M/s.Reliance General Insurance Company
Limited,
Chennai

... Appellant/3rd Respondent

vs

1.Jeyanthi
W/o.Kuppusamy

...1st Respondent/Petitioner

2.Sambasivarao
S/o.Anjaiah

3.Venkateswararao
S/o.Balaiah

... Respondents 2 & 3/
Respondents 1 & 2



Common Prayer: Civil Miscellaneous Appeals filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.08.2017 passed in M.C.O.P.Nos.488 and 494 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur.

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

For Respondents: Mr.G.Balasubramaniam [R1]
Ex parte [R2 & R3]

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

These matters are heard through Video Conference.

2. Since both appeals arise out of one and the same judgment, they are disposed of by this common judgment.

3. For the purpose of convenience, the parties are referred to, as they are ranked before the Tribunal, as claimants and Insurance Company.

4. Challenging the quantum of compensation awarded by the Tribunal in and by its common judgment dated 22.08.2017, passed in M.C.O.P.Nos.488 and 494 of 2011 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Tiruppur, the Insurance Company has filed the present appeals.

5. It is the case of claimants in both appeals that, on 13.12.2008, while they, along with another, were proceeding towards Tiruppur in a TATA Indigo Car bearing Registration No.TN-39-AK-2241, at about 03.15 p.m., a Mini Bus bearing Registration No.AP-26-Y-1717, belonging to second respondent in both the appeals and insured with Insurance Company, came in a rash and negligent manner and dashed against the Car, owing to which, the claimants suffered grievous injuries. Immediately, they were admitted at Government Hospital, Villupuram, and after being provided first aid, they were admitted at Malar Hospital, Chennai and thereafter, at Ramakrishna Hospital, Coimbatore for further treatment. The details of injuries suffered by claimants in the accident, are as follows:



Claimant
K.G.Nataraj

: fracture of pelvis forearm, fracture of chest ribs, reduction of hip, fracture of skull, fracture of right pubis and dislocation of hip and injuries all over the body.

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Claimant
Jeyanthi

: loss of vision in the right eye, fracture in right zygomatico maxillary complex, fracture of nasal bone, cut injury inner canthus and multiple facial bone fracture and injuries all over the body.

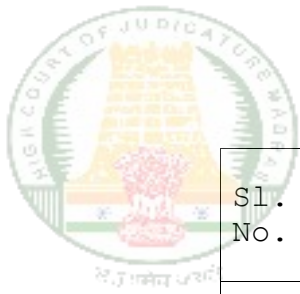
Hence, the claimants have filed two separate claim petitions seeking compensation in sums of Rs.23,00,000/- and Rs.20,00,000/- respectively for the injuries suffered by them in the accident.

6. Resisting the claim made by the claimants, Insurance Company had filed a detailed counter statement inter alia contending that the accident had not occurred in the manner as projected by the claimants. They have also denied the age, occupation and income of the claimants. Hence, Insurance Company prayed for dismissal of the respective claim petitions.

7. To prove their claim, on behalf of the claimants, claimants have been examined as PWs.1 and 2, one Kuppusamy as PW-3 and Dr.Senthilkumar as PW-4, and 36 documents were marked. On the side of Insurance Company, none were examined and no exhibits were marked in both the claim petitions.

8. On an appreciation of materials before it, the Tribunal found that the accident had occurred due to the rash and negligent driving of the Mini bus belonging to second respondent and held that the Insurance Company, being the insurer of the offending vehicle, is liable to pay compensation. The break-up details of the compensation awarded by the Tribunal are as follows:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)	
		M.C.O.P.No. 488/2011	M.C.O.P.No. 494/2011
1.	Loss of Income	13,20,000.00	-
2.	Medical Bills	7,29,853.48	1,83,406.48
3.	Pain and suffering	1,00,000.00	2,00,000.00
4.	Mental agony	1,00,000.00	2,00,000.00
5.	Nutrition	50,000.00	50,000.00
6.	Transport expenses	25,000.00	50,000.00



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)	
		M.C.O.P.No. 488/2011	M.C.O.P.No. 494/2011
	Total	23,24,853.48	6,83,406.48
	Rounded off to	23,25,000.00	6,83,500.00

The said sums were directed to be paid together with interest at 7.5% p.a. from the date of claim petitions till the date of realization. Challenging the quantum of compensation, the present appeals have been filed by Insurance Company.

9. Learned counsel for Insurance Company submits that absolutely no document had been produced to prove the income of the first respondent/claimant K.G. Nataraj. However, the Tribunal, based on Ex.P20 - Income Tax Forms, fixed his monthly income at Rs.10,000/- and applied multiplier towards awarding compensation under the head 'loss of income'. The Medical Board assessed the disability of claimant K.G.Nataraj as 50%. The main grievance of learned counsel is that, this is not a fit case warranting application of multiplier. However, the Tribunal applied multiplier, which had resulted in awarding an exorbitant sum of Rs.13,20,000/- as compensation under the head 'loss of income'. Hence, learned counsel prays this Court to award a sum of Rs.3,000/- per percentage of disability and accordingly, modify the compensation payable under the head 'loss of income'.

10. Insofar as the compensation awarded to claimant/Jeyanthi is concerned, it is the submission of learned counsel for Insurance Company that the Tribunal awarded a sum of Rs.2,00,000/- under the heads viz., mental agony and pain and suffering, which had resulted in awarding an exorbitant sum of Rs.6,83,500/- as the total compensation. Learned counsel further submits that the amount awarded under the other heads is also on the higher side. Submitting as above, learned counsel prays this Court to reduce the compensation.

11. On the other hand, learned counsel for the claimants made his submissions supporting the award passed by the Tribunal.

12. This Court has considered the rival submissions. Perused the materials on record.

13. As the quantum of compensation alone is challenged in these appeals, this Court is not dealing with the aspect of 'rash and negligence'.

14. C.M.A.No.1883 of 2018 (M.C.O.P.No.488 of 2011):
In the accident, claimant K.G.Nataraj suffered grievous



injuries. The Medical Board assessed his disability at 50%. However, this Court finds that absolutely, no document had been produced to establish that the injuries suffered by claimant resulted in a permanent disability. Under such circumstance, this Court is of the view that where the disability is not a permanent one, the application of multiplier towards arriving at compensation is not warranted. Accordingly, the compensation awarded by the Tribunal under the head 'loss of income' is set aside. Instead, considering the nature of injuries suffered by the claimant, a sum of Rs.3,000/- is awarded per percentage of disability i.e. Rs.1,50,000/- (3000 * 50) towards disability. Further, this Court, given the nature of injuries suffered by claimant, considers that it would be appropriate to award a sum of Rs.1,50,000/- under the head 'future medical expenses'. Considering the fact that the claimant would find it difficult to carry on his avocation as he was doing before the accident, a sum of Rs.2,00,000/- is awarded under the head 'loss of amenities'. Further, The amount awarded under the other heads is justifiable and the same is hereby confirmed. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)	
		Awarded by Tribunal	Awarded by this Court
1.	Loss of Income	13,20,000.00	-
2.	Medical Bills	7,29,853.48	7,29,853.48
3.	Disability (6000 * 50)	-	1,50,000.00
4.	Pain and suffering	1,00,000.00	1,00,000.00
5.	Mental agony	1,00,000.00	1,00,000.00
6.	Future medical expenses	-	1,50,000.00
7.	Loss of amenities	-	2,00,000.00
8.	Nutrition	50,000.00	50,000.00
9.	Transport expenses	25,000.00	25,000.00
	Total	23,24,853.48	15,04,853.48
	Rounded off to	23,25,000.00	15,00,000.00

15. C.M.A.No.1884 of 2018 (M.C.O.P.No.494 of 2011):

In the accident, claimant Jeyanthi suffered grievous injuries. The Medical Board assessed her disability at 30%. Though the claimant suffered grievous injuries and lost vision in the right eye, this Court is of the view that a sum of Rs.2,00,000/- each awarded under the heads 'pain and suffering'



and 'mental agony' is on the higher side and hence, the amount awarded under such heads is reduced to Rs.1,00,000/- each. This Court, taking note of the nature of injuries suffered by the claimant, considers that it would be appropriate to award a sum of Rs.60,000/- under the head 'loss of amenities'. Further, this Court finds that the amount of Rs.50,000/- each awarded under each of the heads 'Nutrition' and 'Transport expenses' is on the higher side and the same is reduced to Rs.25,000/-. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)	
		Awarded by Tribunal	Awarded by this Court
1.	Medical Bills	1,83,406.48	1,83,406.48
2.	Pain and suffering	2,00,000.00	1,00,000.00
3.	Mental agony	2,00,000.00	1,00,000.00
4.	Loss of amenities	-	60,000.00
4.	Nutrition	50,000.00	25,000.00
5.	Transport expenses	50,000.00	25,000.00
	Total	6,83,406.48	4,93,406.48
	Rounded off to	6,83,500.00	5,00,000.00

In the result,

- (i) C.M.A.No.1883 of 2018 filed by the Insurance Company is partly allowed. The compensation of Rs.23,25,000/- awarded by the Tribunal is hereby reduced to Rs.15,00,000/-. The Insurance Company is directed to deposit the reduced compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only), less the amount already deposited, together with interest at 7.5% p.a. and costs, if any, awarded by the Tribunal, from the date of petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made by the Insurance Company, claimant is permitted to withdraw the same along with accrued interest and costs, less the amount, if any already withdrawn by him, by filing necessary application before the Tribunal.
- (ii) C.M.A.No.1884 of 2018 is partly allowed. The compensation of Rs.6,83,500/- awarded by the Tribunal is hereby reduced to Rs.5,00,000/-. The Insurance Company is directed to deposit the reduced compensation of Rs.5,00,000/- (Rupees Five Lakhs only), less the amount already deposited, together with interest at 7.5% p.a. and costs, if any, awarded by the Tribunal, from the date of petition till the date of deposit within a period of four weeks from the date of receipt of this



judgment. On such deposit being made by the Insurance Company, the claimant is permitted to withdraw the same along with accrued interest and costs, less the amount, if any already withdrawn by her, by filing necessary application before the Tribunal.

There shall be no order as to costs in these appeals. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruppur.

2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.Nos.1883 and 1884 of 2018

NRL(CO)
CB(07/09/2021)