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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 18.06.2021

Coram :

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 3097 of 2014
and
M.P.No.1 of 2014

The Manager
National Insurance Company Limited
III Floor, Units Buildings Annexe
No.72, Mission Road, Bangalore
Karnataka - 560 027.

... Appellant

Versus

1. G.Karthikeyan
2. The Proprietor
K.K.Indane Enterprises
D.No.135/131, Old Madras Road
Sri Sai Complex,
Ulsoor, Bangalore.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Order and Decreetal order dated 18.02.2013 made in MCOP No.198 of 2011 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Krishnagiri.

For Appellant : M/s.D.Bhaskaran

For Respondents : Mr.C.Prabakaran

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by the award dated 18.02.2013 made in MCOP No.198 of 2011 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Krishnagiri, the second respondent in the claim petition/National Insurance Company has preferred this appeal challenging the liability and quantum of compensation.

2. On 01.07.2010 at about 9.30a.m, the claimant/first respondent herein was riding in a Herohonda motorcycle bearing registration No.TN-24-B-6583 and while crossing Basaweswara



Circle near Race Course Road, a Tempo bearing registration No.KA-03-C-8378 came in the same direction in a rash and negligent manner dashed against the petitioner and thereby, the claimant sustained grievous injuries and hence, the claimant claimed a sum of Rs.10,00,000/- as compensation.

3. The claim petition filed by the claimant was resisted by the second respondent/Insurance Company disputing the age, occupation, income and status of the petitioner and involvement of the vehicle, the manner of the accident and the injuries sustained by the claimant and also disputed the quantum of compensation sought by the claimant.

4. In order to prove the claim, on the side of the claimant, the claimant was examined as PW.1 and Dr.M.Devendiran was examined as PW.2. Exs.P1 to P13 were marked on the claimant's side. On the side of Insurance Company, no oral and documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence available on record, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the tempo belonging to the first respondent and insured with the second respondent and passed an award for a sum of Rs.9,39,520/-, under the following heads:-

Sl.N o	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Loss of income	7,25,760/-
2	Medical Bills (Ex.A10)	6,400/-
3	Medical Bills (Ex.A11)	1,06,360/-
4	Pain and Suffering	50,000/-
5	Future treatment throughout life	21,000/-
6	Extra nourishment	15,000/-
7	Attender Charges	15,000/-
	Total	9,39,520/-

6. Learned counsel for the appellant/Insurance Company would mainly submit that the compensation awarded by the Tribunal under the head 'loss of income' is on the higher side, considering the nature of injuries and the period of treatment



and also the fact that the disability is 'physical disability' not 'functional disability'. The Tribunal ought not to have adopted multiplier method, but ought to have adopted percentage method, when there is no evidence to conclude that the injured cannot do any avocation and earn income in future, since the injured was admitted in the hospital on 01.07.2010 and after surgery on 02.07.2010, he was discharged from hospital on 03.07.2010 and joined duty within two months, which is seen from Ex.A8 dated 06.09.2010. Therefore, the learned counsel submitted that the interference of this Court is required to reduce the compensation.

7. Per contra, learned counsel for the first respondent herein/claimant would submit that the Tribunal, after considering the nature of injuries, surgery, disability and treatment taken by the claimant and also considering the age of the claimant, awarded a correct compensation and the same requires no interference by this Court.

8. It is seen from Ex.A2-Discharge summary that the claimant underwent surgery for his fracture. The Doctor opined that the claimant suffered 48% physical disability. Ex.A8 is the welcoming letter from Mind Tree Software Company. The claimant himself made admission that he has joined in the said company. Obviously the claimant's avocation has not been affected due to the injury sustained by him in the accident. Hence, this Court is of the view that the Tribunal erred in adopting multiplier method for awarding compensation under the head 'loss of income' and it is just and proper to apply percentage method for awarding compensation under the head 'loss of income'. Considering the nature of injuries sustained by the claimant, this Court is of the opinion that Rs.3,000/- per disability would be just and fair and the award under the head 'loss of income' has to be modified as Rs.1,44,000/- (48% x 3000).

9. Since the compensation awarded by the Tribunal under the heads 'medical bills (Ex.A10) and (Ex.A11)' is based on medical bills submitted by the claimant and the same was not disputed by the appellant, the same is hereby confirmed.

10. The compensation awarded by the Tribunal under other heads remain unaltered, as the same are just and reasonable.

11. The Tribunal has not awarded any amount for the loss of income during the period of treatment, which may be atleast four months. Hence a reasonable sum of Rs.80,000/- is awarded towards loss of income during the treatment period.



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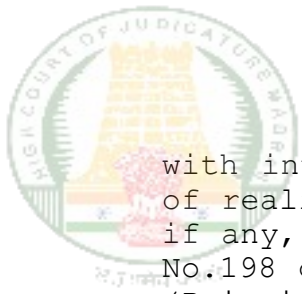
12. The Tribunal has not awarded any amount towards loss of amenities and transportation. This Court is of the opinion that a sum of Rs.25,000/- towards loss of amenities and Rs.7,000/- towards transportation is to be awarded which is just and reasonable.

13. Accordingly, the compensation awarded by the Tribunal is modified as follows:-

Sl.No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)	Amount awarded by this Court (in Rs.)
1	Loss of income	7,25,760/-	1,44,000/-
2	Medical Bills (Ex.A10)	6,400/-	6,400/-
3	Medical Bills (Ex.A11)	1,06,360/-	1,06,360/-
4	Pain and Suffering	50,000/-	50,000/-
5	Future treatment throughout life	21,000/-	21,000/-
6	Extra nourishment	15,000/-	15,000/-
7	Attender Charges	15,000/-	15,000/-
8	Loss of income during treatment period	NIL	80,000/-
9	loss of amenities	NIL	25,000/-
10	Transportation	NIL	7,000/-
	Total	9,39,520/-	4,69,760/- (Rounded to Rs.4,70,000/-)

14. In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the amount of compensation awarded by the Tribunal from Rs.9,39,520/- to Rs.4,70,000/- (Rupees Four Lakhs and Seventy Thousand only), which carries interest at 7.5% per annum from the date of claim petition till the date of deposit, except for the default period, if any. No costs in this CMA. Consequently, connected miscellaneous petition is closed.

15. It is seen that vide order dated 18.11.2014 made in M.P.No.1 of 2014, this Court directed the appellant to deposit 50% of the award amount with accrued interest and cost to the credit of MCOP. The appellant/Insurance Company is directed to deposit the award amount, as assessed by this Court, together



with interest at 7.5% p.a., from the date of MCOP till the date of realisation with costs of MCOP. Except for the default period if any, less the amount already deposited, to the credit of MCOP No.198 of 2011 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Krishnagiri, 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 claimant/first respondent herein, through RTGS, within a period of two weeks thereafter. The appellant/Insurance Company is entitled to withdraw the amount deposited, if any, more than the amount awarded by this Court with interest and cost of the MCOP.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mra
To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy to

The Section Officer,
Vernacular Records Section,
High Court, Madras.

+1cc to M/s.C.Prabakaran, Advocate Sr.28670

CMA. No. 3097 of 2014
and
M.P.No.1 of 2014

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srg 22/09/2021