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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.3117 of 2021
C.M.A.No.3294 of 2021 & C.M.P.No.18712 of 2021
(Heard through VC)

C.M.A.No.3117 of 2021

P.Ayyappan

...Appellant/Petitioner

Vs.

1.K.Moorthy

2.Reliance General Insurance

Company Ltd.,

No.6, 6th Floor, Haddows Road,

Nungambakkam,

Chennai - 600 006.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 19.04.2021 made in M.C.O.P.No.2401 of 2015, on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant : Mr.K.Vardha Kamaraj

For Respondents : R1 (Not ready in notice)
Mr.Elveera Anttonettr Ravindran
for R-2

C.M.A.No.3294 of 2021

Reliance General Insurance

Company Ltd.,

No.6, 6th Floor, Haddows Road,

Nungambakkam,

Chennai - 600 006.

... Appellant/2nd Defendant



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Vs.

1.P.Ayyappan
2.K.Moorthy

... 1st Respondent/Claimant
...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree dated 19.04.2021 made in M.C.O.P.No.2401 of 2015, on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai.

For Appellant	: Mr.Elveera Anttonettr Ravindran
For Respondents	: Mr.K.Vardha Kamaraj for R-1 R2 (Not ready in notice)

C O M M O N J U D G M E N T

Judgment of the Court was delivered by K.KALYANASUNDARAM, J.

Challenging the Judgment and Decree dated 19.04.2021 passed in M.C.O.P.No.2401 of 2015, on the file of the Motor Accidents Claims Tribunal (VI Court of Small Causes), Chennai, awarding a sum of Rs.17,42,500/- as compensation for the injuries sustained by the claimant in the accident that took place on 10.01.2015, the present appeals have been filed before this Court.

2. Questioning the quantum of compensation awarded by the Tribunal as erroneous, the Insurance Company has filed C.M.A.No.3294 of 2021. As against the very same award dated 19.04.2021, the claimant has filed C.M.A.No.3117 of 2021 seeking enhancement of compensation. Since the appeals arise out of one and the same award, they are taken up for hearing together and are disposed of by this common Judgment.

3.The brief facts of case of the claimant before the Tribunal are as follows:-

On 10.01.2015 at about 23.30 hours, the claimant, P.Ayappan, was riding his bicycle and at that time, a motorcycle bearing registration No.TN-12-B-3130 came in a rash and negligent manner and dashed against him. Due to which, he thrown away and sustained fracture on his right side hip and multiple grievous injuries all over his body. He was carried to K.H.M.Hospital, Chennai. Further case of the claimant is that he was 35 years old at the relevant point of time and he was working as a Cashier and thereby earning Rs.10,000/- per month and hence, he is entitled for Rs.20,00,000/-.



4. The Insurance Company opposed the claim disputing the manner of accident, period of treatment, alleged disability, loss of income, and its liability to pay the compensation. It is further stated that the claim was excessive and exorbitant.

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5. Before the Tribunal, the claimant examined himself as PW.1 and marked Exs. P1 to P14. On the side of the Insurance Company, neither any witness was examined nor any document was marked. Medical Board report of the claimant was examined as Ex.C1. Based upon the oral and documentary evidence, the Tribunal has held that the accident had taken place due to the rash and negligent riding of the rider of the two wheeler. Taking note of the nature of injuries sustained by the claimant, the Tribunal had awarded a total sum of Rs.17,42,500/- as compensation.

6. The learned counsel appearing for the claimant Mr.K.Vardha Kamaraj contents that the Tribunal failed to appreciate the evidence properly and awarded a very meagre compensation. Further, no addition was made under the head of future prospectus. It is submitted by the learned counsel for the claimant that in a recent decision in Jithendran v. The New India Assurance Co. Ltd. and another [Civil Appeal No. 6494/2021 dated 27.10.2021], the Honourable Supreme Court considered a similar case where it was found that though the disability of the appellant in the said case was assessed as 69%, 100% should have been the disability. Thus the learned counsel for the appellant canvassed 100% functional disability in the case also, even though the disability was assessed as 80%. It is further contended that the claimant had sustained Acute Compression Fracture of L1 Vertebral body with Retropulsion causing spinal canal injury with Paraplegic and due to the injuries sustained, he could not do his routine work and further submitted that the amount awarded under various heads are disproportionate to the nature of injuries sustained by the claimant. Therefore, he prayed for suitable enhancement of compensation.

7. On the other hand, the learned counsel appearing for the Insurance Company Mr.Elveera Anttonettr Ravindran would argue that the claimant did not prove his avocation, income at the time of accident and also failed to prove that he was not able to continue any avocation after the accident. It is further contended that the Tribunal, by adopting multiplier method for 80% of functional disability awarded enormous amount as compensation without any basis and it require interference by this Court.



compensation under the loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. In the case on hand, the claimant was working as a cashier and after the accident, he did not join his duty and the medical evidence also established that he could not do any job, as the claimant had sustained paraplegia below the hip.

12. After analyzing evidence, this Court comes to the conclusion that the disability sustained by the claimant is totally functional disability, which would render the claimant immobile for the rest of his life. The medical records placed before the Court describes the plight of the claimant and the sufferings he has to endure throughout his life on account of the injuries sustained by him in the accident. That be so, following the ratio in Jithendran's case (supra), the functional disability of the claimant herein also to be fixed at 100% and the disability income should be re-calculated on its basis.

13. It is further seen that the claimant was earning monthly salary of Rs.10,087/-. In such circumstances, this Court, while fixing the monthly salary at Rs.10,000/-, taking into consideration the future prospective increase in income of the claimant over a period of time, adds 40% and fixes the monthly salary at Rs.14,000/-. Adopting multiplier of 16, the compensation towards loss of earning capacity is quantified at Rs.26,88,000/- (Rs.14,000/- x 12 x 16). In view of the compensation granted towards loss of earning capacity, the amount awarded by the Tribunal under the heads of disability, loss of earning and loss of future earning, are set aside.

14. Considering the nature of injury, period of treatment and the nature of disablement, more particularly the mobility of the claimant, the necessity for help for the claimant in discharging the day-to-day activities and the loss suffered by the claimant, this Court is of the considered opinion that the compensation awarded under various heads not only requires to be restructured but appropriate enhancement also has to be made, wherever necessary. Accordingly, this Court quantifies the compensation payable under the various heads as noted below :-

S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
1.	Functional Disability	Rs.15,36,000/-	-



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S. No.	Heads under which amounts are awarded by the Tribunal	Amount awarded by the Tribunal in Rs.	Amount awarded by this Court in Rs.
2.	Loss of earning capacity	-	Rs.26,88,000/-
3.	Pain and suffering	Rs. 15,000/-	Rs. 50,000/-
4.	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
5.	Transportation	Rs. 10,000/-	Rs. 50,000/-
6.	Damage to Clothes	Rs. 1,000/-	Rs. 1,000/-
	Loss of earning	Rs. 1,30,000/-	-
7.	Loss of future earning	Rs. 16,000/-	-
8.	Attender Charge	Rs. 14,500/-	Rs. 1,00,000/-
9.	Loss of amenities	Rs. 10,000/-	Rs. 50,000/-
	Total	Rs.17,42,500/-	Rs.29,49,000/-
Rounded off to			Rs.29,50,000/-

Hence, the award amount is enhanced to Rs.29,50,000/- from Rs.17,42,500/-. In total, the claimant is entitled to Rs.29,50,000/- along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

15. Accordingly, the appeal in C.M.A.No.3294 of 2021 filed by the Insurance Company is dismissed and the appeal in C.M.A.No.3117 of 2021 filed by the claimant is allowed. Further, the claimant is directed to pay the balance court fee for the award amount ordered by this Court, since he restricted his claim to Rs.25,00,000/- in the appeal. The decree shall be drafted only on the payment of balance court fee.

16. The Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

r n s



To

1. The Motor Accidents Claims Tribunal
(VI Court of Small Causes), Chennai.

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Copy To

The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.63116
+2cc to Mr.Elveera Ravindran, Advocate SR.No.63099, 63100

C.M.A. No.3117 of 2021
C.M.A.No.3294 of 2021 &
C.M.P.No.18712 of 2021

BS (CO)
GN(16/03/2022)