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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.01.2021

Pronounced on : 03.02.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.M.A.No.113 of 2017

and

C.M.P.No.885 of 2017

Cholamandalam MS General Insurance Company Limited,
Dare House, 2nd Floor,
No.2, N.S.C. Bose Road,
Chennai 600 001.

.. Appellant/2nd Respondent

/versus/

1.Palanivel .. 1st Respondents/claimant
2.Elangovan .. 2nd Respondents/1st Respondent
(2nd respondent exparte before lower court)

Prayer : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.11 of 2013 dated 29.04.2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Ariyalur.

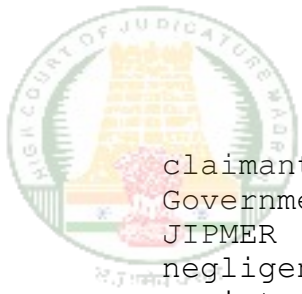
For Appellant : Mr.E.Rajadurai for
M/s M.B.Gopalan Asso.

For Respondents : Mr.P.Parthi kannan for R1
No appearance for R2

J U D G M E N T

The appeal is filed by the insurance company being aggrieved by the quantum of compensation awarded to the accident victim.

2. On 28/12/2012 at about 7.45 p.m., near Thalavai Sakthivel Rice Mill on Pennadam to Thalavai Main Road, a lorry bearing registration No. TN 61 A 6279 dashed against the claimant / first respondent herein, who was travelling along the said road in his motorcycle bearing registration No.TN 61 C 4258 carrying his friend Kasinathan on the pillion. In the said accident, the



claimant sustained severe head injury. He was admitted in the Government Hospital at Viruthachalam and later, shifted to JIPMER at Pondicherry. The accident occurred due to the negligence of the lorry driver. Hence, criminal case was registered against him for causing grievous hurt by rash and negligent driving.

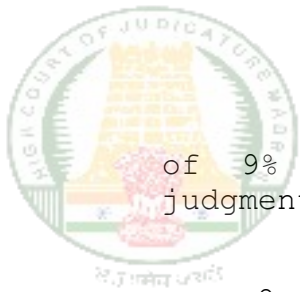
3. Alleging that in the accident the claimant sustained multiple fractures in the head. One piece of the bone punctured the right eye and the eye was removed. To save his life, several surgeries were done on his head. The claimant lost his earning capacity completely. Hence, a consolidated sum of Rs.40 lakhs sought as compensation against the owner of the lorry and the insurance company under which the lorry is insured.

4. The insurance company resisted the claim petition on the ground that the accident occurred due to the negligence of the claimant, who crossed the road from left to right without showing any signal. Further the quantum of compensation sought is high and exorbitant.

5. Before the Tribunal, the claimant through oral and documentary evidence proved that the negligence of the lorry driver was the cause for the accident. The First Information Report and evidence of eye witnesses relied for holding the negligence on the part of the lorry driver. The letter Ex.P-10, given by one Duraisamy, District Secretary of CWFI, to show that the claimant was a member of the Indian Construction Labours Association, was considered to fix the income of the claimant as Rs.8,000/- pm. Based on the disability certificate Ex.P-14, assessing the permanent disability as 51%, the Tribunal has applied multiplier for 20% functional disability and awarded Rs.3,07,200/- and also awarded a lumpsum of Rs.1,02,000/- for 21% permanent disability. In addition on other non conventional heads and medical expenses compensation was awarded. Totally, Rs.4,95,000/- with 9% interest.

6. The said award is under challenge in this appeal.

7. The learned counsel for the appellant submitted that, when the disability is certified as 51% and after awarding Rs.2000/- per percentage of disability, the Tribunal ought not to have awarded further sum of Rs.3,07,000/- under loss of income, since it amounts to duplication of compensation, the same to be deducted. Further, it was contended that the award



of 9% interest is contrary to the Hon'ble Supreme Court judgment. The interest must be restricted to 7.5%.

8. The learned counsel for the 1st respondent submitted that the compensation under the head of disability and loss of income is not duplication. For physical disability and for loss of earning capacity due to the injury, the tribunal has awarded separate compensation. The claimant had sustained head injury. His brain came out after open fracture of his skull. The head is now covered with soft bone. The claimant is leading a vegetable living. The Tribunal physically saw the claimant and on observing the difficulty, the claimant facing due to the accident injury has awarded the fair and just compensation.

9. Heard the counsels. Records perused.

10. The medical records indicate, the claimant sustained compound depressed fracture in right frontal with frontal contusion. PW-2-Dr.Mathivanan who clinically examined the claimant has deposed that the claimant suffers giddiness and memory loss. His front head bone removed and assessed permanent disability at 51%.

11. The Tribunal has accepted the said disability certificate and has awarded Rs.1,02,000/-, thereafter, assigning his own reasoning, has awarded an additional sum of Rs.3,07,000/- fixing 20% functional disability leading to reduction of the earning capacity and had applied multiplier, taking into consideration his monthly income as mason at Rs.8,000/-. Obviously, there is duplication of compensation for the disability. The Tribunal, while computing compensation for disability after awarding 20% functional disability for which multiplier is applied and compensation of Rs.3,07,000/- for loss of earning capacity is awarded, ought to have deducted the same while awarding compensation for physical disability. Likewise, the interest rate should have been 7.5% and not 9%. Except these modification, the award of the Tribunal under other heads are confirmed.

12. As the result, the award of the Tribunal is modified and scaled down as under:-



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Sl. No.	Particulars	Award of the Tribunal (Rs.)	Award of this Court (Rs.)	Enhanced/ Reduced/ Confirmed/ Awarded
1.	Disability	1,02,000-00	62,000-00 (31%x2000)	Reduced
2.	Loss of earning capacity	3,07,000-00 (8000x12x16x20 %)	3,07,000-00 (8000x12x16x20 %)	Confirmed
3.	Loss of income for 3 months (3x8000)	24,000-00	24,000-00	Confirmed
4.	Medical Expenses	6,000-00	6,000-00	Confirmed
5.	Transport expenses	20,000-00	20,000-00	Confirmed
6.	Extra Nourishment	20,000-00	20,000-00	Confirmed
7.	Attender charges	15,000-00	15,000-00	Confirmed
8.	Damage to clothes	1,000-00	1,000-00	Confirmed
Total		4,95,000-00	4,55,000-00	Reduced

13. The award of Rs.4,95,000/- with 9% interest from the date of petition till the date of deposit (excluding the period of dismissal for default if any) is modified and scaled down to Rs.4,55,000/- with 7.5% interest from the date of petition till the date of deposit (excluding the period of dismissal for default, if any), . The said amount with accrued interest shall be deposited within a period of 8 weeks from the date of receipt of the order copy, (less the amount already deposited). On such deposit, the claimant is permitted to withdraw the money on appropriate petition.

14. In the result, this Civil Miscellaneous Appeal is partly allowed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court, Ariyalur.

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+1cc to Mr.S.Kaithamalaikumarn, Advocate, S.R.No.5786

C.M.A.No.113 of 2017 and
C.M.P.No.885 of 2017

BS (CO)
HS (15/09/2021)