



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2021

C O R A M

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NOS.2431, 2432 & 3194 OF 2017

AND

C.M.P.NO.19631 OF 2017

M/s.TATA AIG General Insurance Company Limited,
2nd Floor, Samson Towers,
Pantheon Road, Egmore,
Chennai - 600 008.

...Appellant/2nd Respondent
in C.M.A.No.3194 of 2017

Vs

1.D.Kathirvel
2.P.T.Saravanan

... Respondent/Petitioner/
1st Respondent in C.M.A.No.3194 of 2017

D.Kathirvel

...Appellant/Petitioner in
C.M.A.No.2431 of 2017

Vs

1. Saravanan P.T
2. M/s.TATA AIG General Insurance Company Limited,
2nd Floor, Samson Towers,
Pantheon Road, Egmore,
Chennai - 600 082.

... Respondents/Respondents
C.M.A.No.2431 of 2017

P.Gokulan

...Appellant/Petitioner
in C.M.A.No.2432 of 2017

Vs

1. Saravanan.P.T
2. M/s.TATA AIG General Insurance Company Limited,
2nd Floor, Samson Towers, Pantheon Road, Egmore,
Chennai - 600 008.

... Respondents/Respondents
C.M.A.No.2432 of 2017

Common Prayer in C.M.A.Nos.2431 & 3194 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, prayed to set aside the judgment and



decree dated 15.03.2017 made in M.C.O.P.No.5617 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

Prayer in C.M.A.No.2432 of 2017:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, prayed to set aside the judgment and decree dated 15.03.2017 made in M.C.O.P.No.5618 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

In C.M.A.Nos.2431 & 2432 of 2017

For Appellant : Mr.K.Suryanarayanan
For R1 : Not Residing at Present
For R2 : Mr.M.B.Raghavan

In C.M.A.No.3194 of 2017

For Appellant : Mr.M.B.Raghavan
For R1 : Mr.K.Suryanarayanan
For R2 : Left

JUDGMENT

These Civil Miscellaneous Appeals have been filed against the judgment and decree dated 15.03.2017 made in M.C.O.P.Nos.5617 & 5618 of 2014 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The appellant-Insurance Company in C.M.A.No.3194 of 2017 is the 2nd respondent in M.C.O.P.No.5617 & 5618 of 2014 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. The appellant in C.M.A.No.2431 & 2432 of 2017 filed the above said claim petitions claiming a sum of Rs.30,00,000/- each as compensation for the injuries sustained by them in the accident that took place on 01.06.2014.

3.According to the appellants, on 01.06.2014 at about 09.00 hours, when D.Kathirvel, appellant in C.M.A.No.2431 of 2017 was riding the Motor Cycle bearing Registration No.TN-21-AU-6955 along with P.Gokulan, appellant in C.M.A.No.2432 of 2017 in Walajahbath to Padapai Road, the lorry bearing Registration No.TN-20-CC-2986 came from opposite direction in a rash and negligent manner at terrific speed endangering to the public safety and dashed against the Motor Cycle and thereby both the rider and the pillion rider thrown out and fell down and they sustained grievous injuries. The accident occurred due to the rash and negligent driving of the driver of the lorry. Therefore, the appellants in C.M.A.Nos.2431 & 2432 of 2017 filed



the claim petitions claiming a sum of Rs.30,00,000/- each as compensation for the injuries sustained by them against the owner and the insurer of the lorry.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to 1st respondent therein, who is the owner of the lorry and directed the appellant-Insurance Company to pay a sum of Rs.9,86,000/- as compensation to the appellant in C.M.A.No.2431 of 2017 and to pay a sum of Rs.4,44,000/- as compensation to the appellant in C.M.A.No.2432 of 2017.

5.Both the Insurance Company and the claimants have filed the separate Civil Miscellaneous Appeals challenging the quantum of compensation awarded by the Tribunal. As far as the liability is concerned, the entire liability was fastened against the owner and the insurer of the lorry. There is no dispute on this aspect.

C.M.A.Nos.2431 & 3194 of 2017:

6.Not being satisfied with the compensation awarded by the Tribunal the claimant in M.C.O.P.No.5617 of 2014 has filed the Civil Miscellaneous Appeal in C.M.A.No.2431 of 2017.

7.C.M.A.No.3194 of 2017 has been filed by the Insurance Company challenging the quantum of compensation.

8.The Tribunal has awarded the compensation in the manner stated below:

1.	Transportation, Nourishing Food and Miscellaneous Expenditure	Rs. 50,000/-
2.	Medical Expenses	Rs.3,05,978/-
3.	Attender Charges	Rs. 20,000/-
4.	Loss of Future Earning Capacity/Power	Rs.5,18,400/-
5.	Loss of Earning during the period of treatment	Rs. 16,000/-
6.	Damages for pain, suffering and trauma	Rs. 50,000/-
7.	Loss of Amenities	Rs. 25,000/-
Total		Rs.9,85,378/-



9. The learned counsel appearing for the Insurance Company submitted that the Court below awarded compensation towards loss of future earnings by applying multiplier method, which is on the higher side.

WEB COPY

10. He further submitted that the injured was not referred to the Medical Board, only the Private Doctor has fixed the disability at 85%. Though, the Doctor was examined, the disability is only a partial permanent disability. Further, the claimant is working as an operator in Remaultnishan Auto, Indian Pvt. Ltd., and his working ability has not been reduced due to the disability suffered by him and no evidence was produced by the claimant to prove that his working ability has been reduced. The claimant was also admitted the fact at present that he is working in the said Company. Under such circumstance, the fixation of 30% as functional disability and awarding the compensation by applying the multiplier method is not proper. Therefore, the learned counsel for the Insurance Company suggested that Rs.3,000/- may be fixed for every percentage of disability and compensation may be awarded accordingly, which would come around Rs.2,55,000/- (85% X Rs.3,000/-).

11. However, on the other side, the learned counsel for the claimant suggested that instead of fixing Rs.3000/- per percentage, the functional disability may be reduced to 20% and compensation may be awarded by applying multiplier method.

12. In view of the above submissions, this Court is of the view that taking into consideration the nature of injury, it is a fit case to apply the multiplier method. Thus, I do not find any fault on the part of the Tribunal, awarding the compensation by applying the multiplier method. However, determining the functional disability at 30% is on the higher side. Hence, this Court is of the view that it would be appropriate to apply multiplier method by fixing the disability at 18%. As far as the notional income is concerned, there is no dispute on either side. Hence, the loss of future earning capacity/power is redetermined as follows:

$$\text{Rs.8000} \times 12 \times 18 \times 18\% = \text{Rs.3,11,040/-}.$$

13. Therefore, loss of future earnings awarded by the Tribunal to a sum of Rs.5,18,400/- stands reduced to a sum of Rs.3,11,040/-.

14. The learned counsel appearing for the claimant would submit that the claimant was earning a sum of Rs.25,000/- per month and due to the injuries he was in the home for a period of two months. The Court below has awarded a sum of Rs.16,000/- towards loss of earning during the period of treatment. Therefore, he submitted two month salary may be awarded as loss of earnings during the treatment period.



15. The learned counsel appearing for the Insurance Company also fairly submitted that the same may be re-fixed. Hence, the loss of earning during the treatment period re-fixed as 40,000/- instead of Rs.16,000/-. The Court below has not awarded any amount towards future medical expense. This Court award a sum of Rs.25,000/- towards future medical expense. Thus, the compensation awarded by the Tribunal in M.C.O.P.No.5617 of 2014 is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Transportation, Nourishing Food and Miscellaneous Expenditure	Rs.50,000/-	Rs.50,000/-
2.	Medical Expenses	Rs.3,05,978/-	Rs.3,05,978/-
3.	Attender Charges	Rs.20,000/-	Rs.20,000/-
4.	Loss of Future Earning Capacity/Power	Rs.5,18,400/-	Rs.3,11,040/-
5.	Loss of Earning during the period of treatment	Rs.16,000/-	Rs.40,000/-
6.	Damages for pain, suffering and trauma	Rs.50,000/-	Rs.50,000/-
7.	Loss of Amenities	Rs.25,000/-	Rs.25,000/-
8.	Future Medical Expenses	-	Rs.25,000/-
	Total	Rs.9,85,378/-	Rs.8,27,018/-

Therefore, the amount awarded by the Tribunal, a sum of Rs.9,85,378/- stands reduced to Rs.8,27,018/-.

C.M.A.No.2432 of 2017

16. Challenging the quantum of compensation awarded by the Tribunal, the claimant in M.C.O.P.No.5618 of 2014 has preferred the Civil Miscellaneous Appeal in C.M.A.No.2432 of 2017.



WEB COPY

17.The learned counsel for the appellant submitted that the appellant was admitted in the hospital for 9 days, the Tribunal has awarded only a sum of Rs.1,50,000/- towards disability by applying percentage method. The Court below ought to have awarded the compensation towards disability by applying multiplier method.

18.The learned counsel for the 2nd respondent submitted that in the present case, the Doctor has determined the disability of the appellant as 55%. The Court below has taken 50% partial permanent disability and awarded a sum of Rs.3,000/- per percentage. He further submitted that the amount awarded by Tribunal is just and reasonable and the same need not be interfered with.

19.Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

20.The Tribunal has awarded the compensation in the manner stated below:

1.	Transportation, Nourishing Food and Miscellaneous Expenditure	Rs. 25,000/-
2.	Medical Expenses	Rs.1,88,860/-
3.	Attender Charges	Rs. 10,000/-
4.	Loss of Future Earning Capacity/Power	Rs.1,50,000/-
5.	Loss of Earning during the period of treatment	Rs. 50,000/-
6.	Damages for pain, suffering and trauma	Rs. 20,000/-
Total		Rs.4,43,860/-

21.In the present case, the appellant was under treatment for the period of 9 days and a sum of Rs.1,88,860/- has been awarded by the Tribunal towards medical expenses and a sum of Rs.10,000/- has been awarded towards attender charges. With regard to the disability, a sum of Rs.1,50,000/- has been awarded by the Tribunal, which is just and reasonable.

22.Therefore, this Court does not find any infirmity in the award passed by the Tribunal. Hence, the judgment and decree passed by the Tribunal need not be interfered with.



23. In the result, C.M.A.No.2431 of 2017 is dismissed and C.M.A.No.3194 of 2017 is partly allowed and the compensation awarded by the Tribunal at Rs.9,85,378/- is hereby reduced to Rs.8,27,018/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.5617 of 2017 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. On such deposit, the Tribunal is directed to transfer the entire amount to the claimant by way of RTGS within a period of three weeks from the date of deposit or the receipt of Bank details or application for withdrawal from the claimant, which ever is later.

24. C.M.A.No.2432 of 2017 is dismissed and a sum of Rs.4,43,860/- awarded by the Tribunal as compensation to the appellant/claimant, along with interest and costs is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.5618 of 2014 on the file of the Motor Accidents Claims Tribunal, II Judge, Court of Small Causes, Chennai. On such deposit, the Tribunal is directed to transfer the entire amount to the appellant/claimant by way of RTGS within a period of three weeks from the date of deposit or the receipt of Bank details from the claimant or application for withdrawal from the claimant, which ever is later. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

rst

To:

The II Judge, Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

+lcc to Mr.K.Suryanarayanan, Advocate, S.R.No.22247

C.M.A.Nos.2431, 2432 & 3194 of 2017

KK(CO)
CS/08/10/2021