

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.666 of 2017 and
C.M.P.No.3720 of 2017

United India Insurance Co. Ltd.,
Cuddalore. .. Appellant/2nd Respondent

Vs.

1.M.Palani .. 1st Respondent / Claimant
2.K.Sivalingam
(He was set exparte by the
Claims Tribunal) ... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment dated 28.07.2005 made in M.C.O.P.No.993 of 2003 by the Additional District Court, FTC No.2, Cuddalore (Before District Court OP No.1054/2001 & Sub Court OP No.878/2001, Cuddalore) on the file of Motor Accident Claims Tribunal, Cuddalore.

For Appellant : Mr.M.J.Vijayaraghavan

For Respondents : No appearance (R1)
R2-Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation granted vide award dated 28.07.2005 made in M.C.O.P.No.993 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Court, FTC No.2, Cuddalore.

2. The claimant, aged 27 years, a driver, earning a sum of Rs.4,500/- per month met with an accident on 02.03.2001, due

to which he sustained injury in left eye lid. Hence, he filed a claim petition, in M.C.O.P.No.993 of 2003, before the Motor Accidents Claims Tribunal (Additional District Court, FTC No.2), Cuddalore, seeking compensation for a sum of Rs.2,00,000/-.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the auto belonging to the second respondent and directed the Appellant/Insurance Company to pay a sum of Rs.1,56,000/- (Rupees One Lakh Fifty Six Thousand only) as compensation to the claimant.

4.Challenging the quantum of compensation awarded by the claims tribunal, the appellant/Insurance Company has come out with the present appeal.

5. Though the learned counsel for the appellant/Insurance Company made several submissions, he restricted his argument on the point to the extent that the Claims Tribunal while applying the multiplier method, the Court ought to have awarded compensation only to the extent of disability assessed by the Doctor, but though the Doctor has assessed disability @ 15% the Court below has not taken the same into consideration while awarding the compensation towards loss of earning power and therefore the same is liable to be set aside.

6. Though notice was ordered to the first respondent through paper publication and the name of the claimant/first respondent printed in the causelist, there is no representation on behalf of the first respondent/claimant.

7. Heard the learned counsel for the appellant/Insurance Company. Perused the materials available on record.

8. It is the case of the injury. The Doctor assessed disability @ 15%. The Court below applied the multiplier method and awarded compensation for the disability. While applying the multiplier method, the Court below should have awarded compensation to the extent of functional disability. As Doctor assessed disability @ 15%, even assuming the entire 15% is taken as functional disability, the Tribunal should have awarded to the said extent of 15%. In the present case, without application of mind, the Tribunal awarded a sum of Rs.1,56,000/- towards Loss of

earning power, by taking a sum of Rs.1,000/- as notional income and by multiplying 12 and by adopting multiplier 13. The Court ought to have awarded only to the extent of 15% disability. On the other hand without application of mind, the tribunal has awarded compensation without taking into consideration of the functional disability. Therefore, the said amount of compensation awarded towards loss of earning power has to be redetermined by this Court .

9. The age of the victim, at the time of accident is 27 years and the multiplier applicable is 17. However, the Court below applied the multiplier 13, which is not correct. The Tribunal fixed notional income of the injured @ Rs.1,000/- per month. However, no addition was awarded towards future prospects. Hence, this Court is inclined to determine the notional income of the injured as Rs.1,000/- including future prospects. Hence, loss of earning power is redetermined by this Court as follows:

$$\text{Rs.}1000 \times 12 \times 17 \times 15 / 100 = \text{Rs.}30,600/-$$

10. Since, this Court awarded compensation for the disability by taking entire 15% as functional disability, there is no necessity to award compensation towards permanent disability. Hence, the same is liable to be set aside. Accordingly, the compensation awarded towards permanent disability is set aside.

11. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of earning power	1,56,000/-	30,600/-
2.	Medical expenses	3,760/-	3,760/-
3.	Permanent disability	5,000/-	Nil-
	Total	Rs.1,64,760/-	Rs.34,360/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,64,760/- is hereby reduced to Rs.34,360/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, thereafter the rate of interest awarded by the Bank for the sum of Rs.34,360/- from the date of deposit till the date of disbursement. The Appellant/Insurance Company is directed to deposit the compensation awarded by this Court with interest and costs, if not deposited, within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.993 of 2003. On such deposit, the Tribunal is directed to transfer the entire award amount to the appellant by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application made by the claimant for withdrawal, whichever is later. If the Insurance Company had already deposited the entire award amount ordered by the Claims Tribunal, the Appellant/ Insurance Company is directed to withdraw the balance amount. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Court,
FTC No.2, (MACT) Cuddalore.

C.M.A.No.666 of 2017

RSV(CO)
SB(12/10/2021)