



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 01.02.2021

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.87 of 2017

&

C.M.P.No.692 of 2017

Royal Sundaram Alliance Insurance Company Limited.,
No.1, Subramaniyam Building,
Club House Road, Anna Salai,
Chennai - 600 002.

... Appellant

/versus/

1. Mr.Nagappan,
2. S.Elango,

... Respondents

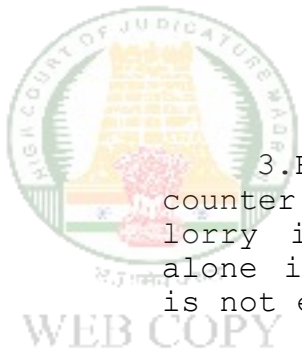
Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree in M.C.O.P.No.5819 of 2011 dated 19.08.2015, on the file of the Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant	: Mr.E.Rajadurai, for Mr.N.Vijayaraghavan
For R1	: Ms.A.Subadra for Ms.Malar
For R2	: No appearance

J U D G M E N T

This appeal is filed by the Insurance Company, being aggrieved by the quantum of compensation awarded by the Tribunal for the claimant.

2.On 11.11.2010 at about 11.30 hours, the first respondent while riding his motor cycle bearing Reg.No.TN-32-R-4951 from Panrutti to Thirukovilur, a lorry bearing Reg.No.TN-31-AC-7779, owned by the 2nd respondent herein and insured under the appellant herein, dashed against the motorcycle rider and caused grievous injury to him. Claim petition was filed seeking compensation of Rs.6,00,000/- on the premises that the claimant was earning Rs.500/- per day as mason and due to the injury caused, he has lost his income during the treatment period and also future prospects.



3.Before the Tribunal, the Insurance Company has filed counter stating that the First Information Report against the lorry insured under them is a false complaint. The claimant alone is solely responsible for the accident and therefore, he is not entitled for any compensation.

4.Before the Tribunal, three witnesses were examined. In support of the claim petition, 11 exhibits were marked. The Tribunal, on considering the evidence held that the fracture of skull and fracture of both bone in left leg, has caused 30% functional disability to the claimant and therefore, it is a fit case to apply the multiplier. Taking Rs.9000/-p.m., as notional income of the claimant, based on the disability certificates Exs.P8 and P9 issued by PW-2 and PW-3, the tribunal had assessed the functional disability at 25% and adding 30% towards future prospects, Therefore, the Tribunal awarded a total sum of Rs.5,60,500/- as compensation with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation.

5.In the appeal, the Insurance Company has primarily assailed the award of the Tribunal on the ground that the fixation of notional income at Rs.9,000/- is excessive and exorbitant. The claimant has not produced any evidence to show his income as mason. Further, for the injury case the Tribunal ought not to have awarded any future prospects. It is also contended by the learned counsel appearing for the Insurance Company that the injury sustained by the claimant does not warrant the multiplication of multiplier when there is no loss of earning capacity.

6.The learned counsel appearing for the claimant/1st respondent contended that the award passed by the Tribunal is fair and just. In fact, no order was passed by the appellant for pain and suffering and loss of amenity.

7.On considering the rival submissions, this Court finds that in the absence of proof for income and being case of injury, the Tribunal ought not to have fixed the monthly income as high as Rs.9,000/- and added 30% for future prospects. At the same time, the Tribunal has also omitted to award compensation for pain and suffering and loss of amenity. Therefore, the award passed by the Tribunal is modified and scaled down as below:-

Sl .N o.	Particulars	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Reduced/ Confirmed/ Awarded/ Omitted
1.	Medical expenses	5,000-00	5,000-00	Confirmed



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Sl. No.	Particulars	Award passed by the Tribunal (Rs.)	Award passed by this Court (Rs.)	Enhanced/ Reduced/ Confirmed/ Awarded/ Omitted
2.	Loss of income for 1 month (treatment period)	9,000-00	8,500-00	Reduced
3.	Loss of earning capacity	5,26,500-00 (9000+30% FPx12x15x25 %)	3,82,500-00 (8500x12x15x 25%)	Reduced
4.	Transportation	5,000-00	5,000-00	Confirmed
5.	Extra nourishment	5,000-00	5,000-00	Confirmed
6.	Attender charges	5,000-00	5,000-00	Confirmed
7.	Damages to clothes and articles	5,000-00	1,000-00	Reduced
8.	Pain and Sufferings	NIL	25,000-00	Awarded
9.	Loss of Amenities	NIL	20,000-00	Awarded
	Total	5,60,500-00	4,57,000-00	Reduced

8.The award passed by the Tribunal is modified and scaled down from Rs.5,60,500/- to Rs.4,57,500-00 with interest at the rate of 7.5% p.a., from the date of petition till the date of realisation.

9.The learned counsel appearing for the appellant/Insurance Company submitted that the entire award with accrued interest has already been deposited in the Tribunal. Therefore, the 1st respondent/claimant is permitted to withdraw the modified award amount with interest on filing appropriate application, less the amount already withdrawn by him. The Insurance Company is permitted to withdraw the excess amount lying in the deposit, less the modified award amount.

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

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar



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To:-

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

+1cc to M/s.M.Malar, Advocate, S.R.No.5330

C.M.A.No.87 of 2017

PP(CO)
CB(13/09/2021)