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CMA.Nos.613 of 2015 & 2329 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.Nos.613 of 2015 & 2329 of 2017

and

M.P.No.1 of 2015

[CMA.No.613 of 2015]

National Insurance Co. Ltd.,
Motor Third Party Claims Hub.
No.751, Anna Salai, Chennai - 600002.

... Appellant / 2nd Respondent

Vs.

1.Guru Ranjan

... Respondent-1 / Petitioner

2.Lamba R.S.

... 1st Respondent / Respondent-2

(R.2 remained ex parte before the Tribunal)

[CMA.No.2329 of 2017]

Guru Ranjan

... Appellant /Petitioner

Vs.



CMA.Nos.613 of 2015 & 2329 of 2017

1.Lamba R.S.
(R.1 remained ex parte before the Tribunal)

2.National Insurance Co. Ltd.,
Motor Third Party Claims Hub.
No.751, Anna Salai, Chennai - 600002.

... Respondents/Respondents

PRAYER in CMA.No.613 of 2015 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgement and decree made in MACTOP No.4696 of 2012 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai dated 25.09.2014.

For Petitioner : Mr.M.Krishnamoorthy

For Respondent : M/s A.Subadra [R.1]

: Ex parte [R.2]

PRAYER in CMA.No.2329 of 2017 : Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgemen and decree dated 25.09.2014 and made in MACTOP No.4696 of 2012 on the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai.

For Petitioner : M/s A.Subadra

For Respondent : Mr.M.Krishnamoorthy[R.2]



COMMON JUDGEMENT

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The insurance company has filed the appeal challenging the quantum of compensation in C.M.A.No.613 of 2015 and the petitioner has filed C.M.A.No.2329 of 2017 seeking enhancement of the award passed by the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai in MCOP No.4696 of 2012. Both the appeals revolve around the quantum of compensation.

2. The petitioner has filed the above claim petition seeking a compensation for the injuries that he had sustained in a road accident on 02.08.2012. It is his case that he had sustained a head injury, Right Elbow injury, right leg tibia fracture and multiple injuries all over his body in the said accident. He claims to be a Junior Erector under one Mr.S.Suresh Babu.

3. The insurance company had questioned the quantum of compensation claimed as being excessive. An additional counter was also filed wherein they had stated that the petitioner had only sustained a right leg injury and therefore, the enhancement of the claim was not commensurate to the injuries.



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4. The Tribunal below proceeded to accept the salary certificate produced by the petitioner to arrive at a monthly income of Rs.10,000/-. The employer of the petitioner has been examined as PW.2 through whom the salary certificate has been marked. The disability of the petitioner had been assessed at 50% both by PW.3. and PW.4. The Tribunal has taken the said disability for the whole body and had therefore fixed the functional disability at 20%. The Tribunal has accepted the evidence of PW.4 who has stated that there is an irregular union with an implant swelling in his right knee and that the petitioner was limping while he walked and required a stick for walking. Therefore, the Tribunal has adopted a multiplier method which is challenged now by the insurance company. That apart, the Tribunal has granted a sum of Rs.1,00,000/- towards pain and sufferings, Rs.50,000/- towards Transport to hospital, Rs.40,000/- towards extra nourishment, Rs.90,000/- towards loss of income calculated at a sum of Rs.10,000/- for 9 months, future medical expenses of Rs.1,00,000/- and loss of marital status of Rs.1,00,000/-. These amounts according to the counsel appearing for the insurance company are on the higher side and further the disability ought not to have been calculated on a multiplier method but only on the



percentage basis by adopting a sum of Rs.3,000/- per percentage for disability assessed at 20%.

5. Mr. M.Krishnamoorthy, learned counsel appearing on behalf of the insurance company would submit that Ex.P.12 is a document which has been created after the filing of the claim statement and when the matter is listed for inquiry. He would further submit that the disability certificate Ex.P.17 cannot be relied upon since the said certificate sets out certain complaints which has not been detected when the claimant was undergoing treatment in the hospital.

6. Per contra, M/s. A.Subadra, learned counsel appearing on behalf of the claimant/petitioner would submit that the appellant has suffered a fracture to the Tibia and right knee. The petitioner has been an inpatient on two occasions totally for a period of over 40 days. The petitioner has also marked the salary certificate through his employer and therefore, the calculation of the loss of income on the basis of the said income was very much in order.



7. Heard the counsels on either side.

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8. The petitioner had sustained injuries in the accident that had taken place on 02.08.2012 and a perusal of Ex.P.3 would show that within a short time from the accident the petitioner was brought to the SRM Medical College Government and Research Center. The discharge summary would indicate that the petitioner has undergone an open reduction and internal fixation with plating and bone grafting. The discharge summaries would further show that apart from the ORIF with plating and bone grafting the wound was closed in layers. The petitioner has once again come to the Hospital on 26.09.2012 with complaints of pain and the petitioner was admitted for over 11 days. The petitioner had only been advised to continue the ROM exercises and Quadriceps strengthening exercises. This would go to show that the wound was healing and the attempts were made to get the appellant moving. The learned counsel would place great reliance on Ex.P.9 to show that the patient has not had the metal plating removed and she would submit that Ex.P.9 is only a preliminary examination and under Ex.P.12, the estimation for removing the metal plate has been given by the very same hospital. The evidence of P.W.3 who has assessed the disability at



50% has gone on to state as follows:-

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" Sustained fracture of the Right Knee proximal tibial bicondyl fracture right knee joint for bone union fixed with long plate and screw he also had ligament injury in the right knee joint causing traumatic arthritis of the knee joint the bone united in wide manner and irregular union causing loss of joint space the right knee joint due to pain and irregular union with the implant swelling right knee he also has pain and limping and walks with help of stick for relief of pain and movements he needs to have another re construction surgery for the right knee joint the implant are still in the bone and he has unstable right knee joint."

9. The discharge summaries which have been marked as Ex.P.3 and E.x.P.4 does not contain any reference to the disabilities listed in the later part of the report of P.W.3. The report appears to be prepared for the purpose of the case particularly when the same has been prepared after the claim petition has been filed. However, this Court had directed the party to appear before the Medical Board. The Medical Board after examination has assessed the disability at 30% partial permanent. Therefore, the adoption of a multiplier method by the Tribunal does not appear to be incorrect. However, the amounts awarded under the head of Transportation, extra



nourishment, loss of income, future medical expenses and loss of matrimonial status appears to be very much on the higher side. Therefore, the compensation awarded is modified as follows:- Towards transportation charges a sum of Rs.50,000/- granted by the Tribunal is reduced to a sum of Rs.25,000/-. Likewise, a sum of Rs.40,000/- granted under the head of extra nourishment is reduced to a sum of Rs.25,000/-. The amounts under the head of loss of future medical expenses and loss of marital status is deleted.

10. Therefore, the modified compensation in the tabulated form would work out as follows;-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	4,32,000/-	4,32,000/-	Confirmed
2.	Transport to Hospital	50,000/-	25,000/-	Reduced
3.	Extra Nourishment	40,000/-	25,000/-	Reduced
4.	Pain and Sufferings	1,00,000/-	10,0000/-	Confirmed
5.	Medical Expenses	23,077/-	23,077/-	Confirmed
6.	Attender Charges	40,000/-	40,000/-	Confirmed
7.	Damages to clothes	3,000/-	3,000/-	Confirmed
8.	Loss of income	90,000/-	90,000/-	Confirmed
9.	Future medical expenses	1,00,000/-	--	Deleted
10.	Loss of amenities	50,000/-	50,000/-	Confirmed



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S.No	Description	Amount awarded Tribunal (Rs)	by	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
11.	Loss of marital status	1,00,000/-		--	Deleted
	TOTAL	10,28,077/-		7,88,077/-	reduced by Rs.2,40,000/-

11. Therefore, the Civil Miscellaneous Appeal filed by the claimant in CMA.No.2329 of 2017 is dismissed and the Civil Miscellaneous Appeal filed by the Insurance Company in CMA No.613 of 2015 is partly allowed and the award of the Tribunal be and hereby is reduced to a sum of Rs.7,88,077/- from Rs.10,28,077/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed. The 2nd respondent/insurance company is directed to deposit the said amount (Rs.7,88,077/-) to the credit of MCOP No.4696 of 2012 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a



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copy of this Judgement. On such deposit being made, the claimant/petitioner [in CMA.No.2329 of 2017] is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount if any already withdrawn. The Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP.No.4696 of 2012 on the file of the Motor Accident Claims Tribunal (IV Judge, Court of Small Causes) at Chennai, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

27.09.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Motor Accident Claims Tribunal
(IV Judge, Court of Small Causes) at Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T. ASHA, J,

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