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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.2312 OF 2016
AND
C.M.P.NO.16274 OF 2016

M/s New India Assurance Co. Ltd.,
No.45, Moore Street, 5th Floor,
Chennai - 600 001.

... Appellant/3rd Respondent

Vs.

1.G.Prince Silas Jebaraj

... 1st Respondent/Petitioner

2.M.Faizur Raghman

... 2nd Respondent/1st Respondent

3.H.Vinothkumar

... 3rd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to set aside the decree and judgment passed in MCOP No.3482 of 2010 dated 22.06.2015 on the file of the Motor Accident Claims Tribunal (VI - Judge), Small Causes Court, Chennai.

For Appellant : Mr.J.Chandran

For Respondents : Mr.T.G.Ravichandran for R1
Mr.K.Ayyadurai for R3

JUDGMENT

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J.]

This appeal is directed against the Judgment and Award passed by the Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai, in MCOP No.3482 of 2010, dated 22.06.2015.



2.The brief facts of the case are that the first respondent/claimant is the pillion rider in the motorcycle bearing Reg.No.TN-07-AP-4543 on 07.05.2010, which was driven by one Karthi. It is his case that the rider of the motorcycle drove the vehicle in a rash and negligent manner and hit against an Eicher Van bearing Reg.No.TN-09-AL-6554, which was coming from the opposite direction. In the accident, he suffered multiple fractures. Immediately, he was taken to Government General Hospital and thereafter, he was shifted to Fortis Malar Hospital, where he took treatment from 08.05.2010 to 01.06.2010 as inpatient. The claimant further stated that he suffered injuries at the age of 23 years and he was a 'Refrigerator and Air-Conditional Mechanic' and thereby, he was earning Rs.12,000/- per month.

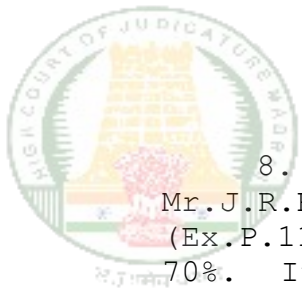
3.The appellant/Insurance Company contested the claim petition by filing a counter stating that the claimant was negligent at the time of accident and hence, he is not entitled for any compensation.

4.Before the Tribunal, the parties had adduced oral and documentary evidence. After analyzing the evidence, the Tribunal held that the rider of the two wheeler was responsible for the accident and awarded compensation of Rs.26,96,000/- together with interest at the rate of 7.5% per annum. Assailing the award, the present appeal has been filed.

5.The learned counsel appearing for the appellant Mr.J.Chandran would argue that the award is imaginary and when the appellant remained ex-parte, the Tribunal has awarded Rs.15,50,000/-. After contest, now, the award has been passed as Rs.26,96,000/- without any basis. It is further stated that though the claimant has produced Ex.P.10-Course Completion Certificate, no material is available to establish that he is working as 'Mechanic', hence, the income taken by the Tribunal is on the higher side.

6.Per contra, the learned counsel appearing for the first respondent/claimant submitted that the claimant after successfully completing +2, has taken a special course for repairing Refrigerator and Air-Conditional and the injuries sustained by the claimant would show that he could not continue his employment and the award amount is very meager. According to the learned counsel, the Tribunal ought to have taken 100% disability to arrive at loss of earning capacity.

7.This appeal is preferred by the appellant/Insurance Company challenging the quantum and there is no dispute with regard to the finding on negligence or liability.

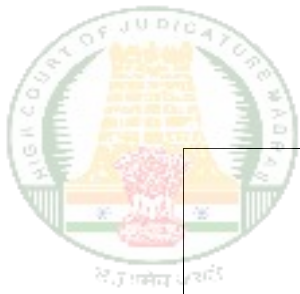


8. Perusal of the records show that a private Doctor Mr.J.R.R.Thiagarajan (P.W.2) issued disability certificate (Ex.P.11) stating that the claimant has sustained disability at 70%. It appears that the claimant was referred to Medical Board and the Medical Board at Government General Hospital, Chennai had issued disability certificate (Ex.P.9) to the effect that the claimant sustained 50% disability. The Tribunal, after considering the evidence of the claimant and the disability certificates (Exs.P.9 and 11) has come to the conclusion that the claimant had suffered 60% loss of earning capacity. We have confirmed the said finding.

9. Though the claimant has contended that he was earning Rs.12,000/- per month by working as 'Refrigerator and Air-Conditional Mechanic', no documentary evidence was produced to that effect. As rightly pointed out by the learned counsel appearing for the appellant, except by producing Ex.P.10-Course Completion Certificate, no other document has been produced to establish that he was actually working as 'Refrigerator and Air-Conditional Mechanic'. Considering the fact that the accident had taken place in the year 2010, it would be appropriate to fix the notional income as Rs.6,000/- per month and by adding 40% towards future prospects, the total income arrived at Rs.8,400/-. By applying multiplier '18', the loss of earning capacity is assessed as Rs.10,88,640/- ($8400 \times 12 \times 18 \times 60 / 100$). Based on the medical bills (Ex.P.7) and Transport Bills (Ex.P.5), the Tribunal has awarded amount under the head of medial expenses and transportation charges. Taking note of these aspects, we are of the considered opinion that the amount awarded under other heads are fair and reasonable and the same are confirmed. The rate of interest fixed by the Tribunal as 7.5% per annum is also confirmed.

10. Accordingly, the compensation awarded by the Tribunal to the claimant is reduced as follows:-

Heads	Amount awarded by the Tribunal Rs.	Re- quantified Amount by this Court Rs.	Status
Loss of income for 3 months	27,000/-	27,000/-	confirmed
Extra Nourishment	25,000/-	25,000/-	confirmed
Transportation	14,250/-	14,250/-	confirmed



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Heads	Amount awarded by the Tribunal Rs.	Re- quantified Amount by this Court Rs.	Status
Damage to Clothes	5,000/-	5,000/-	confirmed
Medical Expenses	6,00,000/-	6,00,000/-	confirmed
Attender Charges	25,000/-	25,000/-	confirmed
Loss of Amenities	50,000/-	50,000/-	confirmed
Loss of Marital Status	1,25,000/-	1,25,000/-	confirmed
Pain and Sufferings	75,000/-	75,000/-	confirmed
Loss of Earning Capacity	17,49,600/-	10,88,640/-	reduced
Total	26,95,850/-	20,34,890/-	reduced
Rounded off	26,96,000/-	20,35,000/-	reduced

11. In such view of the matter, this Civil Miscellaneous Appeal is partly allowed. The award amount of Rs.26,96,000/- is reduced to Rs.20,35,000/-. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant is permitted to withdraw the modified award amount along with proportionate interest and costs, less the amount, if already withdrawn. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

skn

To

1. The Motor Accident Claims Tribunal
(VI - Judge), Small Causes Court,
Chennai District.



2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai.

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+1cc to Mr.J.Chandran, Advocate, S.R.No.18953

C.M.A.No.2312 of 2016
and
C.M.P.No.16274 of 2016

SR-II (CO)
RLP (05/05/2022)