



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. Nos.3695 & 3697 of 2021
and C.M.P.Nos.21693 & 21699 of 2021

M/s.Bajaj Allianz Insurance Co.Ltd.,
Represented by its Branch Manager
B.O., at No.87-91 LA Complex
Villupuram Main Road,
Near Indira Gandhi Square,
Pondicherry-605005

...Appellant/2nd Respondent
[In both the CMAs]

Vs

[C.M.A.No.3695 of 2021]

1.Nasurulla

... 1st Respondent/ Petitioner

2.Neelamengam

... 2nd Respondent/ 1st Respondent.

[C.M.A.No.3697 of 2021]

1.Mohammed Jiavudeen

... 1st Respondent/ Petitioner

2.Neelamegam

... 2nd Respondent/ 1st Respondent.

PRAYER in CMA.No.3695 of 2021: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 22.12.2020 passed In M.C.O.P.No.629 of 2013 on the file of the Court of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

PRAYER in CMA.No.3697 of 2021: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 22.12.2020 passed In M.C.O.P.No.630 of 2013 on the file of the Court of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellant : Mr.G.Vasudevan
For Respondents : Mr.T.Gopinath [R1]
Notice dispensed with vide order
dated 09.03.2022. [R2]



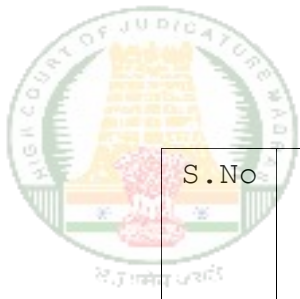
COMMON JUDGEMENT

C.M.A.No.3695 of 2021 has been filed challenging the award in M.C.O.P.No.629 of 2013 and C.M.A.No.3697 of 2021 has been filed challenging the award in M.C.O.P.No.630 of 2013 by the insurance company.

2. As regards the award in M.C.O.P.No.629 of 2013, the insurance company is aggrieved by the adoption of the multiplier method by the Tribunal for arriving at loss of earning capacity, although the injuries sustained by the claimant are simple in nature. The grievous injuries have also not affected his functioning or his capacity to continue to earn. The Medical Board had assessed the disability at 15% whereas the private doctor examined as P.W.6 and assessed at 38% and issued Ex.P.43 disability certificate.

3. The learned counsel appearing for the respondent would submit that the petitioner has sustained a permanent disability but is however not able to deny the fact that the said injuries have not caused any impairment to his daily activities. In the light of the above, the Tribunal has erred in assessing the loss of income on a multiplier method and ought to have arrived at a compensation on a Percentage basis by fixing the notional income at Rs.3,000/-.

4. The arguments of the learned counsel for the appellant has considerable force, since there is no permanent disability caused to the petitioner therefore the loss of earning capacity which is fixed at Rs.1,94,400/- has to be reduced to a sum of Rs.45,000/-. The petitioner has been in the hospital from 27.12.2017 to 23.01.2013, however no amounts had been granted under the head of attender charges, a sum of Rs.15,000/- shall be ordered under this head. That apart, no amount has been awarded towards loss of income for the months he had not attended work. It can be safely taken that the claimant would not have attended work for a period of 2 months. Therefore, taking into account a notional income of Rs.6,000/-, the loss of income would be calculated at a sum of Rs.12,000/-. Therefore, the compensation granted to the respondent in M.C.O.P.No.629 of 2013 is reworked as follows:



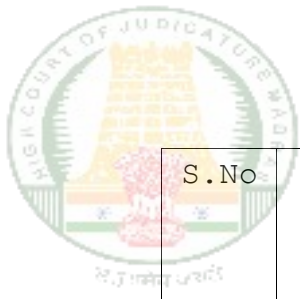
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning capacity	1,94,400/-	45,000/-	Reduced
2.	Extra nourishment	10,000/-	10,000/-	Confirmed
3.	Pain and sufferings	10,000/-	10,000/-	Confirmed
4.	Transportation (Ex.P.29 series)	2,500/-	2,500/-	Confirmed
5.	Medical Expenses (Ex.P26 series)	2,68,697/-	2,68,697/-	Confirmed
6.	Attender charges	--	15,000/-	Granted
7.	Loss of income	--	12,000/-	Granted
	TOTAL	4,85,597/-	3,63,197/-	Reduced by Rs.1,22,400/-

5. As regards the claim in M.C.O.P.No.630 of 2013, the learned counsel for the insurance company would submit that the Tribunal below has erred in arriving at a disability of 46% and adopting a multiplier method.

6. The learned counsel appearing for the claimant/respondent would submit that the petitioner who is working as a professor has suffered an impaired vision and therefore the award of a sum of Rs.5,38,200/- under the said head is in keeping with the disability sustained.

7. A perusal of the report of the District Medical Board Ex.P.42, shows that the disability assessed at 30%. The Tribunal below has wrongly come to the conclusion that the District Medical Board has assessed the disability at 46% which is contrary to Ex.P.42, therefore, the percentage of the disability should be reduced to 30% therefore, the loss of earning capacity should be reworked as follows: $\text{Rs.7,500} \times 12 \times 13 \times 30/100 = \text{Rs.3,51,000/-}$

8. Considering the fact the impaired vision and loss of sight in one eye, the amount due towards pain and suffering has to be enhanced by a further sum of Rs.10,000/-. The reworked compensation would be as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning capacity	5,38,200/-	3,51,000/-	Reduced
2.	Extra nourishment	10,000/-	10,000/-	Confirmed
3.	Pain and suffering	10,000/-	20,000/-	Enhanced
4.	Transportation	5,000/-	5,000/-	Confirmed
5.	Medical Expenses (Ex.P.39 series)	2,71,428/-	2,71,428/-	Confirmed
	TOTAL	8,34,628/-	6,57,428/-	Reduced by Rs.1,77,200/-

9. Therefore, the above Civil Miscellaneous Appeals are partly allowed and the compensation of Rs.4,85,597/- (in MCOP No.629 of 2013) and Rs.8,34,628/- (in MCOP No.630 of 2013) awarded by the Tribunal are hereby reduced to a sum of Rs.3,63,197/- (in MCOP No.629 of 2013) and Rs.6,57,428/- (in MCOP No.630 of 2013). In all other respects the award of the Tribunal is confirmed. The Insurance Company is directed to deposit the said amount (Rs.3,63,197/-) to the credit of M.C.O.P.No.629 of 2013 and (Rs.6,57,428/-) to the credit of M.C.O.P.No.630 of 2013 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur 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 copy of this Judgment. The Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.Nos.629 & 630 of 2013 on the file of the Motor Accident Claims Tribunal Principal District Judge, Perambalur, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. Motor Accident Claims Tribunal,
Principal District Judge, Perambalur.

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Copy To

The Section Office,
V.R.Section,
High Court, Madras.

+2cc to Mr.G.Vasudevan, Advocate SR.No.15944 & 15943
+1cc to Mr.T.Gopinath, Advocate SR.No.16373

C.M.A. Nos.3695 & 3697 of 2021
and C.M.P.Nos.21693 & 21699 of 2021

VBM(CO)
GN(01/06/2022)