IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.91, 74 & 77 of 2022
and
C.M.P.Nos.522 & 526 of 2022

C.M.A.No.91 of 2022

A. Suresh ... Appellant

Vs

1.S. Bavani Sankar

2.Royal Sundaram General Insurance Co. Ltd.,
No.2/319, Rajiv Gandhi Salai (OMR),
Karappakkam,
Chennai – 600 097. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2021 made in M.C.O.P.No.12 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mr.Amar Dineshbhai Pandiya

For Respondents : Mrs.Harini, for R2
for M/S.M.B.Gopalan Associates
No Appearance for R1

C.M.A.No.74 of 2022

Royal Sundaram General Insurance Co. Ltd.,
No.2/319, Rajiv Gandhi Salai (OMR),
Karappakkam,
Chennai – 600 097. ... Appellant

Vs

1.A. Suresh

2.S. Bhavani Shankar ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2021 made in M.C.O.P.No.12 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mrs.C.Harini, for R1
for M/S.M.B.Gopalan Associates

For Respondents : Mr.Amar Dineshbhai Pandiya, for R1
No Appearance for R2

C.M.A.No.77 of 2022

Royal Sundaram General Insurance Co. Ltd.,
No.2/319, Rajiv Gandhi Salai (OMR),
Karappakkam,
Chennai – 600 097. ... Appellant

Vs

1.P. Aananthakumar

2.S. Bhavani Shankar ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.03.2021 made in M.C.O.P.No.13 of 2018 on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant : Mrs.C.Harini, for R1
for M/S.M.B.Gopalan Associates

For Respondents : Mr.Amar Dineshbhai Pandiya, for R1
No Appearance for R2

COMMON JUDGMENT

Since these appeals arise out of the same accident and common award, they are disposed of by this common judgment.

2. For the sake of convenience, the parties are referred to as per their rank in the claim petition.

3. C.M.A.No.91 of 2022 has been filed by the claimant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.12 of 2018. The second respondent / Insurance company has filed C.M.A.Nos.74 & 77 of 2022 aggrieved by the finding of the Tribunal fixing the functional disability at 50% and also with regard to award of compensation for the medical bills and under the head temporary loss of income.

4. The claimants filed above claim petitions on the file of the Motor Accident Claims Tribunal, Special District Court, Erode claiming compensation for the injuries sustained by them in the accident that took place on 05.02.2017.

5. According to the claimants, on the date of accident, i.e. 05.02.2017, while the claimant in MCOP.No.12 of 2018 was riding the motorcycle along with the claimant in MCOP.No.13 of 2018 as a pillion rider in the motorcycle bearing Registration No.TN-77-E-5882, on the Salem – Chennai National Highway from West to East, near

Neelamangalam Ellai Udaiyar Complex, the car bearing registration No.TN-24-AF-0169 driven by its driver in a rash and negligent manner endangering public safety, dashed against the claimants and caused the accident. In the above said accident, both the claimants sustained grievous injuries and hence, are entitled to claim compensation.

6. The first respondent remained ex parte before the Tribunal.

7. The second respondent-Insurance Company filed counter statement denying all the averments made in the claim petitions; that the accident occurred only due to the negligent riding by the rider of the motorcycle who suddenly crossed the road without seeing the car and invited the accident; that hence, the second respondent is not liable to pay compensation; that the claimants are liable to prove the nature of injuries, by valid medical certificate etc., by proper documentary evidence; that the compensation claimed are highly excessing and prayed for dismissal of the claim petitions.

8. Before the Tribunal, the claimant in MCOP.No.12 of 2018 examined himself as PW1 and examined five other witnesses as PW2 to PW6 and marked Ex.P1 to Ex.P37. Neither documents were marked nor witnesses were examined on the side of the Insurance Company. Court documents were marked as Ex.C1 to Ex.C6.

9. The Tribunal after considering the evidence and documents filed on the side of the claimants, held that the accident occurred due to the rash and negligent driving by the driver of the first respondent and directed the second respondent-Insurance Company to pay compensation to the claimants.

10. Aggrieved by the said award, the claimant in MCOP.No.12 of 2018 has preferred the CMA.No.91 of 2022 seeking enhancement of compensation and the second respondent-Insurance Company has filed the CMA.Nos.74 & 77 of 2022 challenging the quantum of compensation awarded by the Tribunal, in both the claim petitions.

11. Though notice has been served on the first respondent and his name is printed in the cause list, none appeared for him.

C.M.A.Nos.91 and 74 of 2022

12(a). The learned counsel for the second respondent / Insurance Company submitted that the claimant had produced fake medical bills; that the claimant took treatment as in-patient in the hospital by name Sri Udhaya Hospital, Vazhapadi from 21.02.2017 to 22.06.2017; the he had admitted in his cross examination that he had taken treatment in another hospital by name Ganga Hospital, Coimbatore during the same time; that therefore, the hospital records have been manipulated and consequently, the medical bills also should not be taken into consideration for award of compensation.

12(b). The learned counsel further submitted that the assessment by the Medical Board initially was 50% temporary disability. Thereafter, on appeal, it was stated that the claimant suffered partial permanent disability at 75%. The Appellate Medical Board, did not give any reason for fixing partial permanent disability at 75%. The learned counsel also submitted that since multiplier method has been adopted, temporary loss of income should not have been awarded. Further, the interest awarded by the Tribunal is excessive and prayed for reduction in the award of compensation.

13. Per contra, the learned counsel for the claimant in C.M.A.No.91 of 2022 submitted that the notional income fixed by the Tribunal at Rs.10,000/- per month is meagre. The accident took place on 05.02.2017 and the claimant was working as Electrician cum Plumber. Further, considering the nature of injuries and the avocation, the functional disability fixed by the Tribunal is just and reasonable. The learned counsel further submitted that the medical bills produced by the claimant is genuine and no interference is called for in the award of compensation under the head medical bills. Hence, the learned counsel prayed for enhancement of compensation.

14. From the materials on record, it is seen that the claimant was examined by the Medical Board. The claimant is said to have suffered temporary disability at 50%. The claimant challenged the said findings before the Appellate Medical Board and the Appellate Medical Board after listing out the nature of injuries suffered by the claimant, held that the

claimant suffered partial permanent disability at 75%. The nature of injuries are as follows:-

> *"Major crush injury right heel pad avulsion with calcaneal fracture, closed right subtrochanteric femur fracture, closed right middle 1/3rd tibial shaft fracture and left ACL injury."*

15(a). Considering the fact that the claimant was working as a Plumber, and the nature of injuries mentioned above, this Court is of the view that the functional disability fixed by the Tribunal at 50% is just and reasonable. The claimant would have certainly suffered functional disability on account of injuries suffered by him. Therefore, no interference is called for in the finding of the Tribunal in fixing the functional disability as 50%.

15(b). The Tribunal fixed the notional income of the deceased as Rs.10,000/- per month for computing the loss of income and awarded compensation by adopting the multiplier method. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.12,000/- per month. It is seen that the age of the claimant was 38 years at the time of accident. Therefore, the multiplier applicable is '15'. Thus, the award of compensation under the head loss of earning capacity has to be Rs.12,000+4800 (12,000x40%)x12x15x50/100 = Rs.15,12,000/-.

16. As regards the medical bills, this Court is of the view that in view of the admission made by the claimant that he was treated as an out-patient in Ganga Hospital, Coimbatore during the period, when he is said to have been an in-patient in Sri Udhaya Hospital, Vazhapadi i.e., between 21.02.2017 to 22.06.2017, this Court is of the view that the medical bills in respect of treatment taken in Sri Udhaya Hospital, Vazhapadi is doubtful. Therefore, this Court is of the view that the said medical bills cannot be considered for computing compensation. Thus, the medical bills/Ex.P.14, the amount of Rs.1,05,687/- pertaining to the expenses incurred in Sri Udhaya Hospital, Vazhapadi cannot be considered. Hence, the award of compensation under the head medial bill is reduced from Rs.3,45,108/- to Rs.2,39,421/-. Further, the award under the head temporary loss of income would also not arise since, multiplier method has been adopted for awarding compensation. Hence, the award of compensation is modified as under:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	50,000/-	50,000/-	Confirmed
2.	Medical expenses	3,45,108/-	2,39,421/-	Reduced
3.	Attender charges	25,000/-	25,000/-	Confirmed
4.	Transportation	61,800/-	61,800/-	Confirmed
5.	Extra nourishment	15,000/-	15,000/-	Confirmed
6.	Temporary loss of earning	50,000/-	-	Set aside
7.	Loss of earning capacity	12,60,000/-	15,12,000/-	Enhanced
	Total	**18,06,908/-**	**19,03,221/-**	**Enhanced by Rs.96,313/-**

17. With the above modification,

(i) C.M.A.No.91 of 2022 filed by claimant is partly allowed and the compensation awarded by the Tribunal at Rs.18,06,908/- is hereby enhanced to Rs.19,03,221/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of a receipt of copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn.

(ii) C.M.A.No.74 of 2022 filed by the Insurance Company is partly allowed in respect of Medical expenses and temporary loss of earning. Consequently connected miscellaneous petition is closed. No costs.

C.M.A.No. 77 of 2022

18(a). The learned counsel for the second respondent / Insurance Company submitted that the Tribunal had merely accepted the disability certificate issued by the Appellate board in Ex.C6/disability certificate, assessing the extent of disability as partial permanent disability of 40% when the said certificate was issued without any basis. The Medical Board had earlier examined the claimant and assessed the extent of disability as 20% temporary disability. The said finding of the Medical Board ought to have been accepted by the Tribunal.

18(b). The learned counsel further submitted that the compensation awarded under the head pain and suffering at Rs.90,000/- is excessive. Further, the learned counsel submitted that the interest awarded by the Tribunal is excessive. The Tribunal ought to have awarded 7.5% interest and hence, prayed for reduction of the compensation amount awarded by the Tribunal.

19. The learned counsel for the claimant per contra submitted that it is true that the Medical Board had initially assessed the disability at 20% permanent disability. On appeal, the Appellate Medical Board assessed it as partial permanent disability at 40%. The second respondent / Insurance Company had not let in any evidence to reject the said certificate. In the absence of the same, the Tribunal was right in accepting the disability certificate issued by the Appellate Medical Board. Further, the Tribunal had only considered two months while granting compensation under the head temporary loss of income. Even, as per the medical record, the claimant took treatment as in-patient for two months. Hence, the loss of income has to be assessed for more number of months. Hence, the learned counsel prayed for dismissal of the appeal.

20. Admittedly, the Appellate Medical Board had assessed the disability as 40% temporary disability. In the absence of any evidence to

reject the same, this Court is of the view that the Tribunal was right in accepting the said certificate and awarding compensation by adopting percentage method. The compensation under the said head at Rs.2 lakhs is justified and no interference is called for. However, this Court finds that the Tribunal had awarded Rs.90,000/- under the head pain and suffering. Considering the nature of injuries, this Court is of the view that it would be just and reasonable to fix the compensation of Rs.50,000/- under the head pain and suffering. The claimant has not established that he had suffered temporary loss of income for more than two months. Hence, the finding with regard to the compensation under the head temporary loss of income is confirmed. Further, the interest awarded by the Tribunal is excessive, the same is modified and the interest shall be calculated at 7.5%.

21. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is reduced from Rs.4,88,793/- to Rs.4,48,793/-, break-up as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	90,000/-	50,000/-	Reduced
2.	Medical bills	66,497/-	66,497/-	Confirmed
3.	Attender charges	20,000/-	20,000/-	Confirmed
4.	Transportation	39,200/-	39,200/-	Confirmed
5.	Extra nourishment	15,000/-	15,000/-	Confirmed
6.	Temporary loss of income	58,096/-	58,096/-	Confirmed
7.	Disability	2,00,000/-	2,00,000/-	Confirmed
	Total	**4,88,793/-**	**4,48,793/-**	**Reduced by Rs.40,000/-**

22. With the above modification, C.M.A.No.77 of 2022 filed by second respondent / Insurance Company is partly allowed and the compensation awarded by the Tribunal at Rs.4,88,793/- is hereby reduced to Rs.4,48,793/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from

the date of a receipt of copy of this Judgment. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

16.08.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To
1.The Motor Accidents Claims Tribunal, Special District Court,
Erode.

2. The Section Officer,
VR Section,
High Court, Madras.

SUNDER MOHAN, J.

AT

C.M.A.Nos.91, 74 & 77 of 2022 and
C.M.P.Nos.522 & 526 of 2022

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