



C.M.A.No.1660 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.1660 of 2016

and

C.M.P.No.12684 of 2016

Shriram General Insurance Co. Ltd.,
Floor, No.66, Thirumalai Pillai Road,
T.Nagar, Chennai 600 017

...Appellant

Vs

1.Kailesh @ Kailesh Kumar
2.V.Rajendran

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 20.07.2015 made in MCOP.No.4705 of 2012 on the file of Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Ms.A.Subadra,
for Ms.M.Malar, for R1



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 20.07.2015 made in MCOP.No.4705 of 2012 on the file of Motor Accident Claims Tribunal (V Court of Small Causes), Chennai.

2. The Tribunal had awarded the compensation as follows:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Transportation, Nourishing food and miscellaneous expenditure	30,000
2	Attender Charges	2,000
3	Medical Expenses	5,000
4	Disability	1,35,000
5	Loss of earning capacity	3,60,000
6	Damages for pain, suffering and trauma	40,000
7	Loss of amenities	25,000
	Total Compensation is fixed at	5,97,000

3. The learned counsel appearing for appellant/insurance company would submit that in the present case, the disability assessed by the Doctor was at 45% and the injured was hospitalised only for 4 days, that too for treating the fracture of proximal third shaft of right femur, open reduction and internal fixation with



I.M.Nailing with interlocking screws (10X400 mm), which are all the preliminary procedure to treat an injured. Even the Doctor, who had treated the injured has not given the disability certificate. But the Doctor, who examined the injured, had assessed the disability at 45% and issued the disability certificate without applying his mind. Further, it has been stated as “Rt.TBIA” in the said disability certificate. Therefore, the said certificate was issued in a mechanical way and based on the same, he was awarded a sum of Rs.1,35,000/- for disability by the Tribunal.

4. Further he would submit that the Tribunal had awarded two compensations, one is for disability by applying percentage method and another is for loss of earnings for future. Hence, he would contend that the claimant is entitled for any one of those compensations.

5. He would also contend that with regard to all other heads, viz., Transportation, Damages for paid and sufferings and Loss of amenities, the compensation awarded by the Tribunal is on higher side and hence, he prayed for reduction of compensation.



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6. Per contra, the learned counsel appearing for the claimant would submit that in the present case, in the discharge summary of the injured, it has been mentioned correctly. However, while issuance of disability, it has been wrongly stated as “Rt TBIA”. Since it is a typographical error, the Doctor who assessed the disability had applied his mind and fixed the disability as 45% correctly.

7. Further he would fairly submit that as far as disability and loss of earnings are concerned, the claimant is entitled for any one of those compensations and the amount should not have been awarded for both disability and loss of earnings, when the compensation for loss of earning capacity was awarded based on multiplier method.

8. With regard to all other aspects, he would submit that the amount awarded by the Tribunal is just and fair and need no interference.

9. I have given due consideration for the submissions made by the learned



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counsel for the appellant and the respondents.

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10. In the present case, it is no doubt that only in the disability certificate it has been wrongly mentioned as “Rt.TBIA”. However, in the discharge summary, it was mentioned as “Right Femur” and hence, the same is only a typographical error and nothing more than that.

11. In the present case, the compensation was awarded for disability by applying the percentage method as well as for loss of earnings by applying multiplier. However, the injured is only entitled for any one of those compensations. This Court is inclined to award compensation by applying percentage method for loss of earnings. Therefore, the disability awarded by the Tribunal for a sum of Rs.1,35,000/- is hereby set aside.

12. As far as loss of earning is concerned, the Tribunal took functional disability and awarded the compensation for entire 45% of disability. In the present case, the claimant took treatment for only 4 days and the injury is also



not grievous in nature and the same would not affect too much of day to day activities. Under these circumstances, this Court will normally take 1/3rd of the functional disability, out of the entire disability assessed by the Doctor. Hence, in the present case, it is appropriate to take 15% of disability for awarding compensation.

13. However, the learned counsel appearing for the insurance company had strongly objected for the taking 15% of disability.

14. In view of the above, taking the nature of injuries, this Court is inclined to determine the compensation by taking functional disability as 13%.

15. This accident was occurred on 30.06.2012 and the injured was Treasure-in-charge at the time of accident. The Tribunal had taken the notional income as a sum of Rs.7,500/-. However, this Court feels that the said amount is on the lower side and since the accident occurred in the year 2012, this Court is inclined to fix Rs.9,000/- as notional income. Further, the future prospects of 40% is to be added to the said notional income and calculated as follows:



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Rs.9,000 (income) + Rs.3,600 (40% of income) = Rs.12,600/-

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16. Further, since age of the injured is 32 years, this Court is inclined to apply the multiplier of '16' as per the law laid down by the Hon'ble Apex Court and the loss of earning capacity was calculated as follows:

Rs.12,600(income) * 16(multiplier) * 12(months)
* 13%(disability) = Rs.3,14,496/-.

17. As far as other heads are concerned, amount awarded by the Tribunal under the head 'Transportation' is reduced from Rs.30,000/- to Rs.10,000/-. Further, the amount awarded for damages for pain, sufferings and trauma is reduced from Rs.40,000/- to Rs.25,000/- and amount awarded for loss of amenities is reduced from Rs.25,000/- to Rs.5,000/.

18. Accordingly, the compensation awarded by the Tribunal is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Transportation, Nourishing food and	30,000	10,000



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S.No.	Heads	Compensation awarded by Tribunal (Rs.)	Compensation awarded by this Court (Rs.)
	miscellaneous expenditure		
2	Attender Charges	2,000	2,000
3	Medical Expenses	5,000	5,000
4	Disability	1,35,000	Nil
5	Loss of earning capacity	3,60,000	3,14,496
6	Damages for pain, suffering and trauma	40,000	20,000
7	Loss of amenities	25,000	5,000
	Total Compensation is fixed at	5,97,000	3,56,496

19. Therefore, the amount awarded by the Tribunal is modified as Rs.3,56,496/- and the same is rounded off to a sum of Rs.3,56,500/-. Accordingly, the award amount stands reduced from a sum of Rs.5,97,000/- to 3,56,500/-. In all other aspects, the award of the Tribunal stands confirmed.

20. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant/insurance company is directed to deposit a sum of Rs.3,56,500/- along with interest and costs, less the amount already deposited, if any, within a period of three weeks from the date of receipt of a copy of this judgment, to the



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credit of MCOP.No.4705 of 2012 on the file of the Motor Accident Claims Tribunal, (V Small Causes Court), Chennai. The Tribunal is directed to transfer the entire amount to the claimant by way of RTGS, within a period of eight weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application for withdrawal from the claimant, whichever is earlier. No costs. Consequently, the connected miscellaneous petition is also closed.

13.07.2023

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order

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To:

The Motor Accident Claims Tribunal,
(V Small Causes Court), Chennai.



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KRISHNAN RAMASAMY,J.

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