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CMA No. 1790 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1790 of 2022
and
C.M.P. No. 12946 of 2022

Reliance General Ins.Co.Ltd.,
2nd Floor, Door No.12, H 2035 15th Main road,
Anna Nagar West, Chennai 600 040

... Appellant

Versus

1.T.Ravi

2.M.Velu

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 59 of 1988 seeking to set aside the decree and Judgment dated 09.07.2021 passed in M.C.O.P. No. 22 of 2018, by the Motor Accident Claims Tribunal, Subordinate Judge at Madurantakam.

For Appellant : Ms. C. Bhuvanasundari.

For Respondents : Mr. K. Govi Ganesan for R1.

No appearance for R2.



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J U D G M E N T

The appeal has been filed by the insurance company challenging the compensation awarded by the Tribunal in M.C.O.P. No. 22 of 2018 dated 09.07.2021.

2.The first respondent / petitioner had filed a claim petition stating that on 19.07.2015 at about 09.30 p.m., while the petitioner was travelling as a pillion rider in a two wheeler ridden by his friend from Cheyyur to Iraniyachithi Village at Chengattu Pond, a dog crossed the road and the two wheeler hit the dog and the petitioner had fallen from the two wheeler as a result of which the petitioner sustained grievous injuries all over the body and thus he is entitled for compensation.

3.The appellant filed a counter denying all the averments made in the claim petition and stated that in any case, the claim was excessive.

4.The second respondent remained ex-parte before the tribunal. Though notice has been served, none has entered appearance on behalf of him.



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WEB COPY 5.The first respondent / petitioner examined one witness on his side and marked Ex.P.1 to Ex.P.10 and M.O.1 series. No witness was examined and no document was marked on the side of the appellant. The disability certificate issued by the Medical Board was marked as Ex.C.1.

6.The Tribunal after considering the evidence and documents filed on the side of the first respondent / petitioner awarded a compensation of Rs.14,62,000/- to be paid by the appellant. Aggrieved by the said order, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that the Tribunal after calculating the loss of future earning by adopting multiplier method ought not to have fixed the compensation under the head disability once again. The learned counsel further submitted that the Tribunal had not justified the award under the head Loss of Earning since the multiplier method was adopted to assess the loss of earnings. Hence, the learned counsel submitted that the compensation awarded under these two heads are erroneous and the over all compensation has to be reduced accordingly.



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8.The learned counsel for the first respondent per contra submitted that the Tribunal was justified in awarding the compensation under the various heads and there is no reason to interfere with the award. Further, merely because the Tribunal had adopted multiplier method to award compensation for loss of future earning, it cannot be said that the compensation cannot be awarded for disability and loss of earnings.

9.This Court on perusal of the impugned award finds that the Tribunal had accepted the disability certificate issued by the Medical Board and assessing the disability at 73% and adopted multiplier method. The Tribunal had taken into consideration the fact that the petitioner was totally incapacitated and in the disability certificate issued by the medical board found that the petitioner suffered locomotor disability and he had also undergone multiple surgeries for the injuries suffered by him. Considering the fact that the petitioner suffered injuries in the lower limb and had a disability in the lower limb and the fact that the petitioner was working as an agricultural coolie, found that the petitioner suffered 60% loss of earning capacity. Thus, the Tribunal fixed the disability at 60%.



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There is no infirmity in the said finding of the Tribunal considering the nature of injuries suffered by the petitioner, the multiple surgeries undergone by him and the disability certificate issued by the Medical Board. The Tribunal therefore was justified in adopting the multiplier method. The accident is of the year 2015 and the notional income adopted by the Tribunal at Rs.7,500/- for an agricultural coolie is also justified. The age of the petitioner was 46 and hence, 25% is added towards future prospects and the multiplier adopted is '13'. Thus, the compensation awarded by the Tribunal towards loss of future earning at Rs.8,77,500/- (Rs.7,500/- + 25% X 60% X 12 X 13) is just.

10.As regards the compensation under the head 'disability', this Court finds that there is no justification for the said compensation. Having adopted multiplier method, the Tribunal in the absence of any evidence to justify the said claim ought not to have awarded the compensation. Hence, the compensation under this head has to be set aside.

11.As regards the loss of earnings, this Court finds that the Tribunal has assessed the loss of earnings for the period of treatment.



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The reasons given by the Tribunal is that the petitioner was taking treatment for nearly one year and hence, the compensation under the head loss of earning was fixed at Rs.7,500/- X 12 = Rs.90,000/-. Considering the nature of injury suffered by the petitioner, this Court is of the view that the loss of earnings can be calculated for a period of six months and thus, the loss of earnings is fixed at Rs.45,000/- (Rs.7,500/- X 6). Further, the amount of Rs.2,00,000/- awarded under the head pain and sufferings is excessive and thus, the same is reduced to Rs.1,50,000/-. The compensation awarded by the Tribunal under the other heads are just and remains unaltered. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transportation	10,000	10,000	Confirmed
2.	Extra Nourishment	7,000	7,000	Confirmed
3.	Loss of Earning	90,000	45,000	Reduced
4.	Loss of Future Earning	8,77,500	8,77,500	Confirmed
5.	Attendant Charges	7,500	7,500	Confirmed
6.	Pain and Sufferings	2,00,000	1,50,000	Reduced



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7.	Disability	2,50,000	---	Deleted
8.	Future Medical Expenses	20,000	20,000	Confirmed
	Total	14,62,000	11,17,000	Reduced by Rs.3,45,000/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,62,000/- is hereby reduced to Rs.11,17,000/- 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 appellant 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 six (6) weeks from the date of a receipt of copy of this Judgment, if not already deposited and permitted to withdraw the excess amount if any deposited earlier. On such deposit the first respondent is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. No costs. Consequently, the connected Miscellaneous Petition is closed.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

The Subordinate Judge ,
Motor Accident Claims Tribunal,
Madurantakam.

C.M.A. No. 1790 of 2022
and
C.M.P. No. 12946 of 2022



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