IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3512 of 2017
and
C.M.P No.22452 of 2017

The Branch Manager
Royal Sundaram Aliance Insurance Co. Ltd.,
Subramaniam Buildings
No.1, Club House Road
2nd Floor, Anna Salai
Chennai-600 002. .. Appellant

Vs.

1.R.Vijay
2.H.R.Ramasamy ..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.03.2015 made in MACTOP No.623 of 2014 on the file of the Motor Accident Claims Tribunal/ Special Sub Judge, Dharmapuri.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.T.Ganesan for R1
No Appearance for R2

JUDGMENT

The appeal on hand is filed against the judgment and decree dated 12.03.2015 passed in MCOP No.623 of 2014, on the file of the Motor Accident Claims Tribunal/Special Sub Judge, Dharmapuri.

2. The Royal Sundaram Aliance Insurance Company Limited is the appellant, who filed this appeal questioning the quantum of compensation.

3. The accident occurred on 13.11.2011 at 5.45 p.m., at Royakottai - Hosur Road, in between Birjeypur and Sanamaha. The Uthanappalli Police Station registered a case in Crime No.168 of 2011. The 1st respondent/claimant was riding Honda Shine CBF Motor Cycle/Solo bearing Registration No.KA-51-W-883 from Dharmapuri to Hosur. The first respondent/claimant, due to the accident sustained grievous injuries including head injury and frontal bone fracture and also lost his 5 front upper teeth and three lower jaw teeth. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the

documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.14,33,667/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. The compensation granted towards pain and suffering, medical bills, transport to hospital, mental agony and attender charges are on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal. The Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. The Tribunal has erroneously assessed the disability at 70% and it has to be reduced. This apart, the first respondent/claimant is working as System Engineer in TCS Company and there is no loss of income. Thus, the compensation awarded is exorbitant. For the aforesaid reasons, the award is liable to be dismissed.

5. The learned counsel for the 1st respondent/claimant disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

6. Insofar as the assessment of disability by the Tribunal is concerned, the PW2/doctor assessed the disability at 45% for bone fracture and PW3/doctor assessed the disability at 36% for loss of 5 front upper teeth and three lower jaw teeth. But, the Tribunal has reduced the disability and totally fixed the disability at 70%, considering the nature of injuries and the evidence of PW2 and PW3 and Ex.P13 disability certificate and Ex.P14 X-ray. Hence, the disability fixed by the Tribunal is a correct assessment.

7. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion that it is not a functional disability and in fact, the claimant is employed, more specifically he was

working as System Engineer in TCS Company, Bangalore. Therefore, there is no future loss of income. This being the factum, the award of compensation by adopting the multiplier is unnecessary. Contrary, a sum of Rs.3,000/- for 1% disability shall be granted considering the year of the accident is 2011. Accordingly, the disability compensation is reduced to Rs.2,10,000/- by this Court instead of Rs.7,87,542/- assessed by the Tribunal.

8. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

9. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

Heads	***Amount awarded by the Tribunal (Rs.)***	***Award Amount by this Court (Rs.)***
Disability at 70% and future loss of income	7,87,542/- (5,515 x 17 x 70 x 12/100	Rs.2,10,000/- (Disability at 70% x 3000)
Pain and suffering	75,000/-	75,000/-
Temporary loss of income for three months	16,545/-	16,545/-
Medical Expenses	4,34,580/-	4,34,580/-
Transport to hospital	45,000/-	45,000/-
Extra Nourishment and damages to articles	10,000/-	10,000/-
Mental Agony	50,000/-	50,000/-
Attender charges	15,000/-	15,000/-
Total	**14,33,667/-**	**8,56,125/-**

10. In the result,

(i) This appeal is partly allowed and the Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.8,56,125/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.623 of 2014 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

08.03.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1.The Motor Accident Claims Tribunal,
Special Sub Judge, Dharmapuri.

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

A.A.NAKKIRAN, J.
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