



C.M.A.No.3862 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3862 of 2019

and

C.M.P.No.22066 of 2019

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

... Appellant

Vs.

1. Shanmugam
2. V.Rajendran

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.02.2015 made in M.C.O.P.No.4704 of 2012 on the file of the Motor Accident Claims Tribunal, (V Court of Small Causes), Chennai.

For Appellants : Mr.S.Dhakshnamoorthy

For Respondents : M/s.M.Malar [R1]

Exparte & Notice Dispensed
with vide order dated
08.06.2023 for R2



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JUDGMENT

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Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, (V Court of Small Causes), Chennai in M.C.O.P.No.4704 of 2012 vide order dated 13.02.2015, the present appeal has been filed before this Court.

2. On 30.06.2012 at about 10:00 a.m., when the injured / claimant was a pillion rider in the motor cycle bearing Reg.No.TN-21L1535, a tipper lorry bearing Reg No.TN 31 AA 7961 driven by its driver dashed against the injured / claimant in a rash and negligent manner resulting in sustenance of grievous injuries. Therefore, the injured / claimant filed a petition before the Tribunal claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him and the same was allowed by the Tribunal vide order dated 13.02.2015 in M.C.O.P.No.4704 of 2012 awarding compensation to the tune of Rs.5,18,000/-. Aggrieved over the same, the appellant / insurance company has filed the present petition.

3. Before the Tribunal, the claimant examined himself as P.W.1 and



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examined the doctor as P.W.2 and marked Exs.P.1 to Ex.P.10. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.5,18,000/- under various heads. Aggrieved over the same, the appellant has preferred the present appeal.

4. The learned counsel appearing for the appellant / insurance company submitted that, though the claimant sustained injuries in the head, the doctor who had given treatment to the claimant was examined as P.W.2 is a general practitioner and assessed the disability at 50% and awarded a sum of Rs.1,50,000/- towards disability and also the Tribunal awarded a sum of Rs.1,68,000/- towards loss of earning capacity which is *per se* unsustainable. He further submits that the first respondent / claimant is either entitled to disability or loss of earning capacity, without doing so, the Tribunal awarded compensation for both the heads which is wholly unsustainable. Accordingly, he prays to allow this appeal.

5. Per contra, the learned counsel appearing on behalf of the first



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respondent / claimant fairly submitted that as the Tribunal has awarded a sum of Rs.1,50,000/- towards disability and a sum of Rs.1,68,000/- towards loss of earning capacity, this Court may remove the head loss of earning capacity and confirm the award amount as fixed by the Tribunal under other heads.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded by the Tribunal. A perusal of the award passed by the Tribunal reveals that, the claimant sustained injury in his head, for which, the qualified doctor to assess the disability of the first respondent is neuro-l surgeon. However, Dr.Saravanabhavanandham, who is a not a specialist in that field and he is only a general practitioner, had assessed the disability of the first respondent at 50% and by accepting the same, the



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Tribunal had awarded a sum of Rs.1,50,000/-, which is highly excessive, which is necessarily to be interfered with. Hence, this Court is inclined to fix the disability at 30% since the percentage of disability vary from doctor to doctor. Therefore, the compensation under the head disability stands reduced to a sum of Rs.90,000/- (30% x Rs.3,000/-) by adopting a sum of Rs.3,000/- per percentage of disability.

8. Further, the Tribunal had awarded a sum of Rs.50,000/- towards transportation, nourishing food and miscellaneous expenditure; Rs.10,000/- towards attender charges; Rs.5,000/- towards medical expenses; Rs.60,000/- towards loss of earning during the period of treatment; Rs.1,68,000/- towards loss of earning capacity; Rs.50,000/- towards damages for pain, suffering and trauma and Rs.25,000/- towards loss of amenities. This Court finds that the compensation awarded under the heads transportation, nourishing food and miscellaneous expenditure, attender charges, medical expenses, loss of earning during the period of treatment and damages for pain, suffering and trauma are just and reasonable and does not require any interference. Insofar as the compensation awarded under the heads loss of earning capacity and loss



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of amenities, no compensation can be awarded under such heads as those heads are not conventional heads, which attract any compensation. Therefore, the compensation awarded under the said heads are accordingly set aside.

9. In the above circumstances, the compensation awarded by the Tribunal is modified as under :

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Transportation, nourishing food, and miscellaneous expenditure	50,000/-	50,000/-
2	Attender charges	10,000/-	10,000/-
3	Medical expenses	5,000/-	5,000/-
4	Disability	1,50,000/-	90,000/- (reduced)
5	Loss of earning during the period of treatment	60,000/-	60,000/-
6	Loss of earning capacity	1,68,000/-	-
7	Damages for pain, suffering and trauma	50,000/-	50,000/-
8	Loss of amenities	25,000/-	-
	Total	5,18,000/-	2,65,000/-

10. Accordingly, the appeal is partly allowed in the aforesaid terms



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and the impugned award of the Tribunal is modified reducing the compensation amount from Rs.5,18,000/- to Rs.2,65,000/-. By order dated 17.10.2019, this Court directed the appellant/Insurance Company to deposit 50% of the award amount. It is informed by the learned counsel appearing for the appellant that the Insurance Company has already deposited the same. Further, the appellant/Insurance Company is directed to deposit the balance of the modified award amount to the credit of M.C.O.P.No.4704 of 2012 along with interest at the rate of 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 already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

03.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.,

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To

- 1.The Motor Accident Claims Tribunal, (V Court of Small Causes), Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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03.10.2023