



WEB COPY



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3117 of 2018

and

C.M.P.No.23634 of 2018

Cholamandalam MS General
Insurance Company Limited
"Dare House" 2nd Floor
N.S.C Bose Road
Chennai-600 001.

... Appellant

..Vs..

1.Periyasamy
2.P.Venkatesappa

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 28.07.2015 made in MCOP.No.2433 of 2013, on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge, Krishnagiri.

For Appellant

: Mr.C.Harini

For M/s.Gopalan Associates

For Respondents

: Mr.Dinesh Kumar for R1

For Mr.Mukund R.Pandiyan



WEB COPY



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

J U D G M E N T

This appeal has been filed by the Appellant/Insurance Company challenging the award dated 28.07.2015 passed by the the Motor Accident Claims Tribunal / Special Subordinate Judge, Krishnagiri, in MCOP.No.2433 of 2013.

2. Heard the learned counsel for the Appellant and the learned counsel for the 1st respondent.

3. The Appellant/Insurance Company has challenged the award on the ground that the quantum of compensation awarded by the Tribunal is excessive.

4. The Tribunal under the impugned award has awarded a compensation of Rs.6,00,800/- together with interest and costs to the claimant as detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of earning capacity	4,60,800/-



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

<i>Heads</i>	<i>Award Amount (Rs.)</i>
6000 x 12 x 40/100 x 16	
Loss of Income 6000 x 5	30,000/-
Pain and Suffering	50,000/-
Extra Nourishment & Transport	25,000/-
Attender charges	15,000/-
Loss of Amenities	20,000/-
Total	6,00,800/-

5. The claimant has sustained Typed I compound segmental fracture on his right leg; lacerated wound about 6 x 4 cm over the anterior aspect of lower 3rd right leg; EHL tear; Tibialis anterior tear and multiple injuries all over his body, as a result of the accident.

6. Before the Tribunal, the claimant has filed seven documents which were marked as Ex.P1 to Ex.P7 and two witnesses were examined on his side namely, the claimant himself as PW1 and the Doctor who examined him, as PW2. On the side of the Appellant/Insurance Company, neither any document was filed nor any witness was examined before the Tribunal.



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

WEB COPY

7. 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, loss of income etc., 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 in awarding the compensation under loss of earning capacity. Insofar as the disability compensation is concerned, the claimant did not suffer any serious injury or disability, but the Tribunal has assessed the disability at 40% and showered the compensation towards loss of earning capacity at Rs.4,60,800/-. Thus, the compensation awarded is exorbitant. For the aforesaid reasons, the award is liable to be dismissed.

8. The learned counsel appearing for the first respondent/claimant submitted that after analysing the evidence on record and the report of the doctor, the Tribunal has rightly assessed the disability at 40% and adopted



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

WEB COPY

the multiplier method for the injuries sustained by the first respondent/claimant. Therefore, the award passed by the Tribunal is just and reasonable and the same does not warrant any interference by this court.

9. The Doctor has assessed the disability of the first respondent/claimant at 50% as seen from the disability certificate Ex.P7. However, the Tribunal has assessed the disability at 40%. The claimant in his claim petition has claimed that he was owning a M.R.F Tyre shop and puncture shop and earning a monthly income of Rs.10000/- and he was aged 35 years at the time of the accident. The claimant has not produced any document to prove his monthly income. However, the Tribunal had fixed the monthly income of the first respondent/claimant at Rs.6,000/- which is on the lesser side. In the considered view of this Court, the grievous injuries caused functional disability and due to which, the claimant was incapacitated to perform his work in a routine and normal manner. Therefore, this Court is inclined to fix Rs.8000/- as monthly income instead of Rs.6000/-. The learned counsel for the appellant/Insurance Company

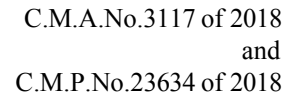


C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

mainly contended that eventhough the 1st respondent did not suffer any permanent disability, the Tribunal has erroneously fixed 40% disability and awarded huge compensation towards loss of earning capacity. Considering the submission made by the learned counsel for the appellant/Insurance company, this Court is of the considered view that the disability fixed by the Tribunal at 40% is on the higher side and it would be appropriate to fix the disability of the claimant at 30%. The Tribunal has awarded a compensation of Rs.30,000/- (6000 x 5) towards partial loss of income for a period of five months. Instead, this Court by fixing the disability at 30% awards a compensation of Rs.4,60,800/- (Rs.8000 x 12 x 30/100 x 16) towards loss of earning capacity.

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

11. For the forgoing reasons, the compensation awarded by the



WEB COPY

WEB COPY

WEB COPY

WEB COPY

WEB COPY



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the first respondent/claimant through RTGS within a period of two weeks thereafter. No costs.

(iv) Consequently, connected miscellaneous petition is closed.

07.02.2023

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

To

- 1.The Special Sub Judge (MACT)
Krishnagiri.
- 2.The Section Officer
V.R.Section, High Court of Madras.

A.A.NAKKIRAN, J.



WEB COPY



C.M.A.No.3117 of 2018
and
C.M.P.No.23634 of 2018

uma

**2018
2018**

**C.M.A.No.3117 of
& C.M.P No.23634 of**

07.02.2023

9/9