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C.M.A. No.2713 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2713 of 2021
and
C.M.P. No.15608 of 2021

The Divisional Manager
United India Insurance Co. Ltd.,
M. M. Reddy Complex,
Old Bengaluru Road,
Hosur.

.... Appellant

vs.

1. Kaleem @ Kaleemulla Khan
2. N. Kamalanatha Reddy

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and decree passed in M.C.O.P. No.294 of 2018 on 04.09.2019 on the file of the learned Motor Accident Claims Tribunal (Additional District Judge), Hosur.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Sivakumar for R1
No appearance for R2

JUDGMENT



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This appeal has been filed by the Insurance company questioning the quantum of compensation awarded by the Tribunal.

2. Heard Mr.J. Chandran, learned counsel for the appellant / Insurance Company and Mr.Sivakumar, learned counsel for the 1st respondent / claimant.

3. The Tribunal under the impugned award has directed the appellant / Insurance Company to pay the 1st respondent / claimant a compensation of Rs.9,34,390/- for the injuries sustained by the 1st respondent / claimant as a result of an accident caused by the vehicle owned by the 2nd respondent and insured with the appellant. The details of the compensation awarded by the Tribunal to the claimant are as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
40% earning capacity (9,000 x 12 x 40% x 18)	7,77,600
Transportation charges	10,000
Nutrition charges	10,000
Attender charges	10,000
Pain and suffering	30,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Discomfort, frustration and loss of social enjoyment	10,000
Medical Bills	66,790
Future Medical expenses	20,000
Total	9,34,390

4. Admittedly, the 1st respondent / claimant has sustained the following injuries as a result of an accident caused by the vehicle insured with the appellant :-

“Left frontal bone fracture and contusion”.

The Medical Board has assessed the disability of the 1st respondent / claimant at 40%. The contention of the appellant / Insurance Company before this Court is that the Tribunal has erroneously adopted the multiplier method and has erroneously determined that a sum of Rs.7,77,600/- is due and payable to the 1st respondent / claimant towards loss of earning capacity despite the fact that the 1st respondent / claimant has not produced any documentary evidence to prove that he has suffered loss of earning on account of the injuries sustained by him, due to an accident caused by the vehicle insured with the appellant.



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5. The nature of injuries sustained by the 1st respondent / claimant has not been disputed by the appellant / Insurance Company as seen from the evidence available on record. As rightly contended by the appellant / Insurance Company, the 1st respondent / claimant has not produced any documentary evidence to prove that he has suffered loss of earning on account of the injuries sustained by him, due to an accident caused by the vehicle insured with the appellant. The 1st respondent / claimant has also not examined his employer as seen from the evidence available on record. The Medical Board has assessed the disability of the 1st respondent / claimant at 40% on partial permanent disability basis. When there is no proof to show that the 1st respondent / claimant had suffered loss of earning and the 1st respondent / claimant had also not examined his employer, the question of adopting multiplier method for assessing the compensation towards loss of earning capacity of the 1st respondent / claimant would not arise. However erroneously, the Tribunal has adopted the multiplier method and has awarded a compensation of Rs.7,77,600/- towards the alleged loss of earning capacity to the 1st respondent /claimant. The Tribunal ought to have awarded the disability compensation to the 1st respondent / claimant only on percentage basis



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and ought not to have adopted the multiplier method after giving due consideration to the fact that no evidence has been produced by the 1st respondent / claimant to prove that he has suffered loss of earning capacity on account of the injuries sustained by him, due to an accident caused by the vehicle insured with the appellant. The accident happened in the year 2014. For an accident of the year 2014, it is settled practice to fix the disability compensation at Rs.4,000/- per percentage of disability. The Medical Board has assessed the disability of the 1st respondent / claimant at 40%. Therefore, the disability compensation payable to the 1st respondent / claimant for the 40% disability suffered by him is fixed at Rs.1,60,000/-, calculated at Rs.4,000/- per percentage of disability. Since the 1st respondent / claimant is not entitled for compensation towards loss of earning capacity by adopting the multiplier method, the compensation determined by the Tribunal towards loss of earning capacity at Rs.7,77,600/- is set aside by this Court and instead this Court is awarding a compensation of Rs.1,60,000/- towards disability to the 1st respondent / claimant for the 40% disability suffered by him, calculated at Rs.4,000/- per percentage of disability. The notional monthly income of the 1st respondent / claimant fixed by the Tribunal at Rs.9,000/- is also a correct assessment as the 1st respondent / claimant



was a Load man and the accident happened in the year 2014.

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6. Insofar as the compensation awarded by the Tribunal under various other heads viz., transportation, nutrition, attender charges, pain and suffering, amenities, future medical expenses is concerned, the same will have to be enhanced by this Court as the Tribunal has failed to take into consideration the nature of the injuries sustained by the 1st respondent /claimant and the period of his hospitalisation. Admittedly, the 1st respondent / claimant had sustained head injury and having suffered the same, he should have been adequately compensated by the Tribunal under the aforementioned heads. Therefore, this Court is enhancing the compensation payable to the 1st respondent / claimant towards transportation from Rs.10,000/- to Rs.20,000/-; nutrition charges from Rs.10,000/- to Rs.25,000/-; Attender charges from Rs.10,000/- to Rs.25,000/-; Pain and suffering from Rs.30,000/- to Rs.75,000/-; Amenities from Rs.10,000/- to Rs.50,000/- and future medical expenses from Rs.20,000/- to Rs.30,000/-

7. Insofar as the compensation awarded by the Tribunal towards medical bills at Rs.66,790/- is concerned, there is no scope for enhancement, as the same has been awarded by the Tribunal only based



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on the medical bills produced by the 1st respondent / claimant before the Tribunal.

8. Insofar as the compensation towards loss of income is concerned, the Tribunal has erroneously failed to award any compensation towards the same. This Court is of the considered view that due to the injuries sustained by the 1st respondent / claimant, atleast for a minimum period of six months, the 1st respondent / claimant would have been unable to do his regular employment. Therefore this Court fixes the compensation towards loss of income at Rs.54,000/-.

9. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Loss of earning capacity * (9,000 x 12 x 40% x 18) 40% x Rs.4,000/- # Rs.4,000/- x 40%	7,77,600 *	1,60,000 #
Transportation charges	10,000	20,000
Nutrition charges	10,000	25,000
Attender charges	10,000	25,000
Pain and suffering	30,000	75,000
Discomfort, frustration and loss of social enjoyment /	10,000	50,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Amenities		
Medical Bills	66,790	66,790
Future Medical expenses	20,000	30,000
Loss of Income	-	54,000
Total	9,34,390	5,05,790

10. In the result, the appeal filed by the appellant / Insurance Company stands partly allowed by reducing the compensation from Rs.9,34,390/- to Rs.5,05,790/- as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

11. The appellant / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.294 of 2018 on the file of the Motor Accidents Claims Tribunal, (Additional District Judge), Hosur, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the 1st respondent / /claimant through RTGS, within a period



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of two weeks thereafter.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

ABDUL QUDDHOSE, J.

vsi2

To
1. The Additional District Judge,



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Motor Accidents claims Tribunal
Hosur.

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2.The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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