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C.M.A.No.334 of 2021
and Cross.Obj.No.15 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.03.2024	Pronounced on: 08.04.2024
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.334 of 2021
and
C.M.P.No.2266 of 2021
and
Cross.Obj.No.15 of 2024

C.M.A.No.334 of 2021

The General Manager,
Cholamandalam MS General Insurance Co.Ltd.,
II Floor, “Dare House”
No.2, NSC Bose Road,
Chennai – 600 001.

...Appellant

VS

1. K.Amjath
2. Anwar Basha

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.07.2020 made in MCOP.No.390 of 2016 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur.



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Amjath

Vs.

... Cross Appellant

1. The General Manager,
Cholamandalam MS General Insurance Co.Ltd.,
II Floor, “Dare House”
No.2, NSC Bose Road,
Chennai – 600 001.

2. Anwar Basha

... Respondents

Cross Objection filed under Order 11 Rule 22 of C.P.C., to enhance the judgment and decree of the claims Tribunal in its award dated 24.07.2020 made in MCOP.No.390 of 2016 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Tirupattur.

For Appellant in CMA.No.334 : Mrs.R.Sree Vidhya
of 2021 and first respondent in
Cross.Obj.No.15 of 2024

For First Respondent in : Mrs.A.Subadra
C.M.A.No.334 of 2021
and appellant in
Cross.Obj.No.15 of 2024

For Second Respondent : R2- Deceased
[in both CMA as well as
Cross.Objection]

JUDGMENT



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2. The factum of the accident, the manner of the accident, rash and negligent driving on the part of the driver of the offending vehicle, are not disputed in this appeal by the appellant Insurance Company. Accordingly, the finding rendered by the Tribunal in this regard are hereby confirmed.

3. On the point of quantum of compensation both parties are heard.

4. Amjath, the claim petitioner had suffered injury in the accident happened in the road transport on 23.02.2016, filed the above MCOP.No.390 of 2016, seeking compensation for the injuries sustained by him in the accident. He examined himself as P.W.1 and marked Ex.P1 to Ex.P23. On behalf of the respondent R.W.1 was examined and marked



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Ex.R1 and R2.

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5. As per Ex.P.23 disability certificate issued by the Medical Board, the disability is fixed at 60% as the disability is permanent in nature.

6. On an combined reading of Ex.P2, wound certificate, Ex.P3, ExP4 discharge certificates coupled with Ex.P23, the Trial Court has come to the conclusion that due to the injuries sustained in the accident, he suffered with functional disability. The condition is mentioned as “Non progressive”. As per the wound certificate (EX.P2) and the discharge summary (Ex.P3), the claim petitioner was diagnosed with comminuted fracture of right knee and cervical strain. During post operative period, the claim petitioner developed left upper limbs weakness as could be seen from Ex.P4. The claim petitioner is not able to walk properly and the injury is non progressive as per the disability certificate. The claim petitioner is a graduate of Computer Science as found in the copy of certificate marked as Ex.P16. The claim petitioner also developed neurological problem as could be seen from Ex.P4, therefore considering the injuries sustained by the claim petitioner and his



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professional employment, the claim petitioner could not do the same work that he had been before injury. The injuries sustained by the claim petitioner leads to functional disability. Hence, I find that the injuries sustained by the claim petitioner is functional disability as the evidence on record adduced by the claim petitioner satisfies the ratio laid down in the ***Raj Kumar Vs. Ajay Kumar*** reported in ***2010(2) TNMAC 581*** and accordingly, the said finding of the Tribunal is hereby confirmed and the functional disability is fixed at 60%.

7. According to the claim petitioner, he was a Computer Science graduate working in Saudi Arabia and marked Exs.P16,17,18, 19 and 20.

8. My attention was drawn to cross-examination of PW1, where it was categorically admitted that he had returned from Saudi Arabia in the year 2012. The immigration seal was affixed at Chennai Airport on 14.12.2012 as per the entry of passport in Ex.P.18. The claim petitioner has not returned to Saudi Arabia after 2012. The claim petitioner also admitted during cross examination that he was not employed anywhere after he returned from



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Saudi Arabia till the date of accident. The claim petitioner was not employed till the date of accident stands established. Accordingly, the notional income of Rs.11,000/- fixed by the Tribunal is found to be just and fair. For the purpose of fixing the future prospects by applying the ratio laid down in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi & others (2017 (16) SCC 680)*, the Trial Court fixed the future prospects at 40% and accordingly monthly income with future prospects is fixed at Rs.15,400/-. The loss of functional disability is fixed at Rs.17,74,080/- [$15,400 \times 12 \times 16 \times 60 / 100 = 17,74,080$].

9. On perusal of Ex.P14, it is found that the bills are not in original and only xerox copies. The same was objected on behalf of the 2nd respondent during cross examination stating that the original bills were already used for getting insurance benefit. Whatever may be the contentions, the claim petitioner is expected to produce the original bills. Since the original is not produced, the amount covered under Ex.P14 could not be accepted. Barring Ex.P14, the medical bills comes to Rs.1,95,703.25/- rounded off to Rs.1,95,703/-. The entire sum of Rs.1,95,703/- is awarded towards medical



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expenses and hence, the compensation awarded by the Trial Court is reassessed as follows:

<i>S.No.</i>	<i>Particulars</i>	<i>Award of Tribunal</i>	<i>Enhanced amount</i>	
1.	Permanent Disability	Rs. 17,74,080/-	Rs. 17,74,080/-	Confirmed
2.	Pain and Suffering	Rs. 75,000/-	Rs. 50,000/-	Reduced
3.	Extra Nourishment	Rs. 5,000/-	Rs. 25,000/-	Enhanced
4.	Transportation Charges	Rs. 8,000/-	Rs. 25,000/-	Enhanced
5.	Attender Charges	Rs. 10,000/-	Rs. 25,000/-	Enhanced
6.	Loss of Amenities	Rs. 10,000/-	Rs. 20,000/-	Enhanced
7.	Medical Expenses	Rs. 1,95,703/-	Rs. 1,95,703/-	Confirmed
	Total	Rs. 20,77,783/-	Rs. 21,14,783/-	

10. In the result, the civil miscellaneous appeal filed by the Insurance Company is dismissed and the Cross Objection filed by the claim petitioner is partly allowed to the extent indicated above. The enhanced compensation amount be deposited by the Insurance Company together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.390



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of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Tirupattur. On such deposit, the claim petitioner is permitted to withdraw the award amount now determined by this Court, along with interest, less the amount if any already withdrawn fixed by the Tribunal by making proper application before the Tribunal. No costs. Connected miscellaneous petition is closed.

08.04.2024

Index:yes/no
Speaking Judgment/Non-Speaking Judgment
Neutral Citation:Yes/No

mp

To

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Tirupattur.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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RMT.TEEKAA RAMAN, J.

mp

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