



CMA No.1441 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.1441 of 2021
and C.M.P. No.7509 of 2021

Judgment reserved on 12.01.2024	Judgment pronounced on 09.02.2024
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The New India Assurance Company Limited,
Room No.180, 1st Floor, VMC Parvatham Towers,
No.172, Sathy Road, Erode - 638 004.
Erode Taluk, Erode District.

..

Appellant

Vs.

1.A.Karthikeyan
2.S.Ramesh
3.V.Viswanathan

[2nd and 3rd respondents remained ex-parte and notice dispensed with them]
..Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 02-08-2019 made in MCOP.No.689 of 2011 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.M.Krishnamoorthy
For R1 : Mr.S.P.Yuvaraj
For R2&R3 : Set Ex-parte before the Tribunal



CMA No.1441 of 2021

JUDGMENT

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The Insurance company is the appellant herein. Challenging the award passed by the Tribunal dated 20.10.2020 in M.C.O.P.No.287 of 2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge, Erode, on the ground of quantum, the appellant has filed the present appeal.

2. The factum of accident, manner of accident and vehicle being insured with the appellant/Insurance company are not in dispute. Accordingly, the finding rendered by the Trial Court with regard to negligence are hereby confirmed.

3. On the point of quantum of compensation, heard the learned counsel for the appellant/insurance company as well as learned counsel for the respondent.

4. The first respondent who sustained injuries in the road transport accident on 21.04.2018 filed the above MCOP claiming compensation for the injuries sustained by him and he is a photographer and videographer and in the said accident, he has suffered bone fracture in the nature of permanent disability filed the above claim petition.



CMA No.1441 of 2021

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5. The learned counsel appearing for the appellant stated that the Tribunal has miscarried itself in fixing the permanent disability at 50% without nature of the injuries and disability suffered by the claim petitioner and also stated that for the pain and suffering, a sum of Rs.85,000/- was awarded and the same is excessive.

6. The learned counsel appearing for the appellant stated that the evidence of P.W.2 whereby it is noticed by the Doctor that he is unable to recover the left hand and there is a metal fixed with the screws on the left hand side, also in the jaw metal has been fixed and due to the same he has difficulty in eating the food.

7. With regard to the percentage of the disability fixed by the Doctor under Ex.P24, this Court finds that it is on the higher side. As per Ex.P21 -Xray report, Ex.P-23 wound certificate and Ex.P5 discharge summary and scan report under Ex.P9 and nature of the injuries suffered by the claim petitioner is over assessed and accordingly, it is reduced to 25%. As per Ex.P12 ,the date of birth of the claim petitioner is 26.06.1987 and date of the



CMA No.1441 of 2021

accident is 21.04.2018, accordingly, on the date of the accident the claim petitioner is aged about 31 years.

8. Taking into consideration that the claim petitioner who is a photographer had suffered functional disability, I find that the ratio laid down in **2010 (2) TN MAC 581 [Raj Kumar Vs Ajay Kumar & another]** has to be applied and multiplier method to assess loss of earning capacity in the category of functional disability is to be determined and applying **[Sarala Verma and Others Vs. Delhi Transport Corporation and another]** for future prospectus of 40%. Accordingly pecuniary loss sustained by him is re-assessed as follows:-

Rs.8000/-+40% of 8000x12x16x25/100=Rs.5,37,600/-

9. The compensation awarded by the Tribunal is Rs.85,000/- towards 'pain and sufferings', is reduced to Rs.50,000/-. The amounts awarded by the Tribunal under other heads are hereby confirmed.

10. Thus, the break-up details of the compensation is as under :



CMA No.1441 of 2021

Sl. No	Heads under which the amount is awarded	Amount awarded by the Tribunal – Rs.	Amount awarded by this Court – Rs.
1.	Loss of earning capacity	----	----
2.	Transport to Hospital	Rs. 20,000/-	Rs. 20,000/-
3.	Extra Nourishment	Rs. 12,000/-	Rs. 12,000/-
4.	Attender Charges	Rs. 12,000/-	Rs. 12,000/-
5.	Future Medical Expenses	Rs. 50,000/-	Rs. 50,000/-
6.	Damages for clothes and Articles	Rs. 3,000/-	Rs. 3,000/-
7.	Medical Expenses	Rs. 2,98,000/-	Rs. 2,98,000/-
8.	Pain and sufferings	Rs. 85,000/-	Rs. 50,000/-
9.	Permanent Disability & Loss of Earning Power	Rs.11,52,000/-	Rs.5,37,600/-
	Total	Rs.16,32,000/-	Rs. 9,82,600/-

In total, the first respondent is entitled to a sum of **Rs.9,82,600/- (Rupees Nine Lakhs Eighty Two Thousand and six hundred only)** as compensation along with interest @ 7.5% per annum from the date of petition till the date of deposit.

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the award amount from **Rs.16,32,000/- to Rs.9,82,600/-** to the extent indicated



CMA No.1441 of 2021

above, along with 7.5% interest per annum.

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(ii) the appellant/ New India Assurance Company Limited is directed to deposit the modified award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the first respondent/claim petitioner is permitted to withdraw the modified award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Appellant/New India Assurance Company Limited is permitted to withdraw the excess amount lying in the deposit before the Tribunal, if the entire award amount has already been deposited by them.

(v) No costs. Consequently, connected Miscellaneous Petition is closed.

09.02.2024

nvi

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order: Yes/no

To



CMA No.1441 of 2021

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Krishnagiri.
2. The Section Officer,
V.R.Section, High Court,
Madras.

RMT.TEEKAA RAMAN,J.,

nvi



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CMA No.1441 of 2021

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