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CMA.Nos.2397 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.2397 of 2022

The New India Assurance Company Limited
Mahe 673310

Appellant

Vs

1. Joshin Mendez
2. Muhmmmed Ashkar.K.H.
3. Shamseer M.P

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 25.03.2022, made in MCOPs.No.5 of 2019, by the Sub Judge (MACT) Mahe, Pondicherry.

For Appellant : Mr.J.Chandran

For Respondents : Mr.R.Krishna Prasad-R1

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the Appellant Insurance Company, challenging the quantum of compensation alone as an exorbitant one, awarded by the judgement and decree, dated, 25.03.2022, made in MCOPs.No.5 of 2019, by the Sub Judge (MACT) Mahe, Pondicherry.
2. The above claim petition has been filed by the 1st Respondent herein, before the Tribunal, seeking a compensation of Rs.7,00,000/-, on various heads, for the injuries sustained by him, in a motor road accident, which had happened on 02.01.2019. The claim petition was resisted by the 2nd Respondent



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herein/owner of the offending vehicle, the 3rd Respondent driver of the offending vehicle and the Appellant Insurance Company, by filing separate counters. On the side of the claimants, PW.1 was examined and Ex.P1 to Ex.P6 were marked. On the side of the Appellant Insurance Company, RW.1 was examined.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle and insured with the Appellant Insurance Company, the Tribunal has awarded a total compensation of Rs.17,24,598/-, on various heads, with interest at 7.5% p.a. from the date of the claim petitions till the date of realization, to be payable by the Appellant Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Studies	100000
2	Extra Nourishment	15000
3	Stander Expenses	4000
4	Transportation Expenses	28300
5	Medical Expenses	263338
6	Permanent Disability	1011960
7	Pain and Suffering	100000
8	Loss of Amenities	100000
9	Damage to Clothes and Articles	2000
10	Future Medical Expenses	100000
Total Compensation		1724598

Aggrieved by the quantum of compensation, this Civil Miscellaneous Appeal has bee filed by the Appellant Insurance Company.

4. This Court heard the learned counsel for the Appellant and the contesting Respondent, considered their submissions and also perused the entire



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materials placed on record.

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5. Since there is no quarrel over the manner, in which the accident had occurred, negligence aspect and the liability aspect as well and the dispute is only with regard to the quantum of compensation, the findings of the Tribunal with respect to the manner of the accident, negligence aspect and liability aspect are confirmed and also it is not necessary to narrate the entire facts in detail in respect of the accident.
6. According to the learned counsel for the Appellant Insurance Company, at the time of the accident, the injured claimant was 18 years old and studying XII (Computer Commerce) and there was no permanent income for him. However, the Tribunal has fixed the notional monthly income of the injured claimant at Rs.10,000/-, which is not proper. Though the claimant has claimed a total compensation of Rs.7,00,000/-, the Tribunal, taking the said notional monthly income, fixing the permanent disability suffered by him at 46.85% as per the disability certificate and applying the multiplier method, the Tribunal has awarded a total compensation of Rs.17,24,598/-, which is exorbitant and more than the compensation that is claimed by the claimant in the claim petition.
7. It is the further contention of the learned counsel for the Appellant Insurance Company that as per the decision of the Honourable Supreme Court reported in **2011-1-SCC-343 (Raj Kumar Vs. Ajay Kumar and another)**,



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once the compensation is awarded towards permanent disability, by applying the multiplier method, there is no question of awarding compensation under the head of loss of amenities and hence, the Tribunal was not right in granting compensation for loss of amenities, when it has awarded compensation towards permanent disability by applying the multiplier method and hence, it should be set aside.

8. Further, the learned counsel for the Appellant Insurance Company would submit that the compensation amounts of Rs.1,00,000/- for loss of studies and Rs.1,00,000/- towards pain and sufferings are also on the higher side and accordingly, the impugned compensation is to be redetermined and reduced.

9. On the other hand, the learned counsel for the 1st Respondent/ claimant submits that due to the accident, the claimant sustained fracture of femur shaft distal and fracture of femur shaft long spiral type, which are grievous in nature and due to such injuries, he lost his studies for about one year and he suffered severe pain and suffering and he also requires compensation for future medical expenses. Considering the nature of injuries suffered by the claimant, the Tribunal has awarded a just and fair compensation and hence, it need not be interfered with.

10. In this case, there is no dispute not only over the quantum of



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compensation and the manner of the accident, but also with regard to the injuries sustained by the claimant and the treatment undergone by him. The only issue raised by the learned counsel for the Appellant Insurance Company is with regard to fixing percentage of disability at 46.85% towards functional disability.

11.As per the directions of this Court, directing the claimant to appear before this Court in person in order to ascertain the disability suffered by him, he appeared in person before this Court. It is noticed that there is a scare in regard to fixation of plate in his leg, but he is able to walk. The claimant stated that he is pursuing studies in Visual Communication.

12.While computing the compensation for the disability suffered by the claimant, it is the functional disability resulting in loss of earning capacity, which is the criteria in assessing compensation and accordingly, we have to assess the functional disability with respect to the whole body. In this case, due to the injuries sustained by the claimant, he would be finding it very difficult to do his normal day to day affairs as he was doing prior to the accident. As there is permanent disability to an extent of 46.85% as per the medical records, viz Ex.P7 wound certificate, issued by the Medical Board, this court is of the



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considered view that the claimant has sustained 20% functional disability in respect of the whole body.

13. In this case, considering the year of the accident, after finishing his studies, as stated by him, he would be in a position to earn a living in the field of visual communication or even by doing any other work suitable to his disability and education and earn a monthly income of not less than Rs.10,000/- as rightly arrived at by the Tribunal.

14. Taking the multiplier of 18 as rightly adopted by the Tribunal, considering the age of the claimant at the time of the accident, i.e 18 years old, the loss of future earnings due to such disability would come to Rs.4,32,000/-(Rs.10000x20/100x12x18). Consequently, the compensation amount of Rs.1,00,000/- awarded under the head of loss of amenities does not arise and accordingly, it is set aside.

15. According to the claimant, he did not pursue his studies for about one year due to the injuries sustained by him. However, considering the fact that he is now pursuing studies in Visual Communication, as stated by him before this Court and the nature of injuries, the compensation amounts of Rs.1,00,000/- each awarded under the heads of loss of studies and pain and sufferings are reduced to Rs.50,000/- each under the said heads. The compensation amounts



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awarded under the other heads, such as, extra nourishment, stander expenses, transportation expenses, medical expenses, which is born out by medical records, damage to clothes and future medical expenses are just and reasonable and hence, they are confirmed. In all, the claimant is entitled to a total compensation of Rs.9,44,638/-, (Rupees nine lakhs forty four thousand six hundred and thirty eight only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation

16.In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.9,44,638/-, (Rupees nine lakhs forty four thousand six hundred and thirty eight only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability (10000x12x18x20/100)	432000
2	Loss of Studies	50000
3	Extra Nourishment	15000
4	Pain and Suffering	50000
5	Damage to Clothes	2000
6	Future Medical Expenses	100000
7	Stander Expenses	4000
8	Transportation Expenses	28300
9	Medical Expenses	263338
Total Compensation		944638

The Appellant / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such



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deposit being made, the Tribunal is directed to transfer, by way of RTGS, the entire compensation amount, with interest due, directly to the bank account of the claimant, within a period of three weeks thereafter. No costs.

22.02.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation
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KRISHNAN RAMASAMY, J.

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To

1. The Sub Judge (MACT) Mahe, Pondicherry
2. The Record Keeper, VR Section, High Court, Madras

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