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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
05.02.2024

Pronounced on
22.04.2024

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.3106, 3108 & 3111 of 2021

and

C.M.P.Nos.17595, 17610 & 17593 of 2021

C.M.A.No.3106 of 2021

M/s.Cholamandal General Insurance Company Limited
Branch Office No.13/2
'AB Towers', II Floor
Police Line Street
Valipalayam, Tiruppur

... Appellant

Vs.

1.Minor T.Indiran @ Ezhil
By his next friend and Mother Mohana
Wife of Thirupathi
Azhagiya Pudhur Village
Balinayanapalli Post
Krishnagiri Taluk and District

2.P.Tamilarasi
Residing at Door No.6/15
Mottarapalayam
Keeranur Post
Tirupur 638 701

... Respondents



CMA.Nos.3106, 3108 & 3111 of

Prayer:

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 28th October 2020 passed in MCOP.No.38 of 2018 by Motor Accident Claims Tribunal (Special Subordinate Court), at Krishnagiri.

For Appellants : Mr.J.Michael Visuvasam

For Respondents : Mr.J.Pradeep (for R1)

C.M.A.No.3108 of 2021

M/s.Cholamandal General Insurance Company Limited
Branch Office No.13/2
'AB Towers', II Floor
Police Line Street
Valipalayam, Tiruppur

... Appellant

Vs.

1.Mohana
Wife of Thirupathi
Azhagiya Pudhur Village
Balinayanapalli Post
Krishnagiri Taluk and District

2.P.Tamilarasi
Residing at Door No.6/15
Mottarapalayam
Keeranur Post
Tirupur 638 701

... Respondents

Prayer:

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 28th October 2020 passed in MCOP.No.452 of 2017 by Motor Accident Claims Tribunal (Special Subordinate Court), at Krishnagiri.



For Appellants : Mr.J.Michael Visuvasam

For Respondents : Mr.J.Pradeep (for R1)

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C.M.A.No.3111 of 2021

M/s.Cholamandal General Insurance Company Limited

Branch Office No.13/2

'AB Towers', II Floor

Police Line Street

Valipalayam, Tiruppur

... Appellant

Vs.

1.G.Munirathinam

Son of Gopal Naidu

Azhagiya Pudhur Village

Balinayanapalli Post

Krishnagiri Taluk and District

2.P.Tamilarasi

Residing at Door No.6/15

Mottarapalayam

Keeranur Post

Tirupur 638 701

... Respondents

Prayer:

Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 28th October 2020 passed in MCOP.No.450 of 2017 by Motor Accident Claims Tribunal (Special Subordinate Court), at Krishnagiri.

For Appellants : Mr.J.Michael Visuvasam

For Respondents : Mr.J.Pradeep (for R1)



COMMON JUDGMENT

CMA.No.3106 of 2021 has been filed against the Decree and Judgment dated 28th October 2020 passed in MCOP.No.38 of 2018 by Motor Accident Claims Tribunal (Special Subordinate Court), at Krishnagiri.

2.CMA.No.3108 of 2021 has been filed against the Decree and Judgment dated 28th October 2020 passed in MCOP.No.452 of 2017 by Motor Accident Claims Tribunal (Special Subordinate Court), at Krishnagiri.

3.CMA.No.3111 of 2021 has been filed against the Decree and Judgment dated 28th October 2020 passed in MCOP.No.450 of 2017 by Motor Accident Claims Tribunal (Special Subordinate Court), at Krishnagiri.

4.The Insurance Company is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

5.The factum of the accident, manner of the accident and rash and negligence on the part of the insured vehicle and the period of insurance policy are not under dispute and therefore, the findings of the Tribunal in this regard are hereby



confirmed. On the point of quantum only these Appeals have been filed by the Insurance Company.

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6.During trial, on the side of the claim Petitioner, PW1 to PW3 were examined, Ex.P.1 to Ex.P.29 were marked and on the side of the Respondents, RW1 was examined and Ex.R1 was marked. Ex.C1 to Ex.C3 were marked as court documents.

7.Heard the learned counsel for the claim Petitioner and the learned counsel for the Insurance Company and perused the available records.

8.CMA.No.3106 of 2021

The claim Petitioner is the student studying in school aged about 12 years. The Medical board, under Ex.C1 assessed the permanent disability of the claim Petitioner at 30%. During the cross examination of PW2, who is the Mother of the injured stated that the claim Petitioner is continuing the education. The Tribunal has rightly come to the conclusion that the disability is permanent and not a functional disability and hence, awarded a sum of Rs.3,00,000/- for 30% permanent disability. Based on Ex.P.16 & Ex.P.17/discharge summaries, Ex.P.18/Medical bills, the Tribunal has awarded a sum of Rs.43,061/- towards medical expenses. The same cannot be termed as on the higher side. Hence this Appeal is dismissed.



9.CMA.No.3108 of 2021

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The claim Petitioner was examined as PW2 before the Tribunal and marked, Ex.P.8/Accident Register, Ex.P.9/discharge summary, Ex.P.10/Medical bills, Ex.P.11/Copy of Aadhar card, Ex.P.12/Medical bills, Ex.P.13/Prescriptions and Ex.P.14/CT scan report. As per Ex.P.11, year of birth of the claim Petitioner is 1979. Date of accident is 08.10.2016 and therefore, the age of the claim Petitioner at the time of the accident is 37 years old. Since the claim Petitioner was worked as ready made dress vendor, the Tribunal has fixed the monthly income at Rs.8,500/-. The same is hereby confirmed. As per the evidence of PW2, she had sustained fracture on the right hand, radius bone and also had fracture in C5 and C6. As per Ex.C.2/disability certificate issued by the Medical board, the claim Petitioner suffered by 40% permanent disability. The claim Petitioner taken treatment as inpatient in CITI Hospital for six days. On a combined reading of Ex.P.9/discharge summary, evidence of PW2 and Ex.C2, the Tribunal has rightly come to the conclusion and fixed the functional disability at 20%. Taking note of the claim Petitioner 's injuries, resulted in loss of earning capacity, the Tribunal has rightly adopted multiplier method, by adding 40% towards future prospects and adopting '15' as multiplier, assessed the the loss of earning capacity as Rs.4,28,400/-, which is just and proper and the same is hereby confirmed.

10.The Tribunal has awarded a sum of Rs.1,10,189/-, towards medical expenses, a sum of Rs.10,000/- towards transportation, a sum of Rs.15,000/- towards



nutrition and attender charges, a sum of Rs.32,000/- towards pain and sufferings, a sum of Rs.32,000/- towards social amenities and a sum of Rs.1,000/- towards damages to clothes, in total a sum of Rs.6,28,589/- as compensation to the claim Petitioner, which is a reasonable one and hence, the same is hereby confirmed. This CMA is dismissed accordingly.

11.CMA.No.3111 of 2021

The claim Petitioner was examined as PW1. Ex.P.4 is the discharge summary, Ex.P.5 is the Medical bills, Ex.P.7 is the bank passbook. The disability certificate issued by the Medical Board was marked as Ex.C1. As per Ex.C1/disability certificate, 60% disability has been fixed for the claim Petitioner. On perusal of Ex.C1 coupled with the oral evidence of PW1, the Tribunal rightly come to the conclusion that the Petitioner is unable to move the right hand fingers and he cannot lift the left hand and taking into consideration the nature of employment said to have been carried on by the claim Petitioner, the Tribunal fixed the functional disability at 30%. On perusing the discharge summary/Ex.P4 and relevant entries in Ex.C1/permanent disability, the same is now reduced to 20%.

12.The Tribunal has rightly fixed the monthly income of the claim Petitioner as Rs.8,500/-, added 25% towards future prospects and adopted multiplier method by applying '14' as multiplier and hence the loss of earning capacity re-assessed as follows:



$$[(8500 + 25\% \text{ of } 8500) \times 12 \times 14 \times 20\% = \text{Rs.}3,57,000/-]$$

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13.The Tribunal has awarded a sum of Rs.48,000/- each towards pain and sufferings and social amenities. As per the medical bills, the Tribunal has awarded a sum of Rs.4,68,499/- towards medical expenses, a sum of Rs.10,000/- towards transportation, a sum of Rs.15,000/- towards nutrition and attender charges and a sum of Rs.1,000/- towards damages to clothes The same are also hereby confirmed.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of earning capacity	357000
2	Medical expenses	468499
3	Transportation	10000
4	Nutrition and attender charges	15000
5	Pain and sufferings	48000
6	Social amenities	48000
7	Damages to clothes	1000
	Total	947499
	Rounded off	947500

In total, the claim Petitioner is entitled to a sum of Rs.9,47,500/- (Rupees nine lakh forty seven thousand and five hundred only). The Tribunal has awarded 7.5% interest. The same is also hereby confirmed.

14.In fine (CMA.Nos.3106 & 3108 of 2021),



These Civil Miscellaneous Appeals are dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

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15.In fine (CMA.No.3111 of 2021)

(i) Appeal stands partly allowed, reducing the award amount from Rs.11,25,999/- to Rs.9,47,500 /- to the extent indicated above, with 7.5% interest per annum. No Costs. Consequently, connected Miscellaneous Petition is closed.

(ii) the Insurance Company is directed to deposit the reduced 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 claim Petitioner is entitled to get the entire award amount. The claim Petitioner is permitted to withdraw the entire award amount with interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the Insurance Company is permitted to withdraw the excess amount already deposited before the Tribunal, less the reduced award amount, if any, with accrued interest.

22.04.2024



CMA.Nos.3106, 3108 & 3111 of

Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order
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To

The Special Subordinate Judge
Motor Accident Claims Tribunal
Krishnagiri



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CMA.Nos.3106, 3108 & 3111 of

RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

C.M.A.Nos.3106, 3108 & 3111 of 2021

and

C.M.P.Nos.17595, 17610 & 17593 of 2021

Dated: 22.04.2024