



C.M.A.No.2107 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 09.02.2024	Pronounced on 25.03.2024
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2107 of 2019

and

C.M.P.No.8052 of 2019

M/s.Cholamandalam Ms General Insurance Company Limited
State Bank of Travancore upstairs
No.9, First Floor
Rajaji Road
Peramanur Main Road
Salem 636 007

... Appellant

Vs.

1.Saraswathy
Wife of Sivalingam
D.No.291, VI Block
Andipatti Housing Board
Gugai, Salem 636 006

2.Shanmugham
Son of Sivalingam
No.291, Andipatti
Gugai, Salem 636 006

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgment dated 11th April, 2018, passed in MCOP.No.386 of 2016, on the file of the Motor Accident Claims Tribunal (Special Sub Judge No.2) at



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For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.S.P.Yuaraj (for R1)

J U D G M E N T

The Appeal has been filed against the Decree and Judgment dated 11.04.2018, passed in MCOP.No.386 of 2016, on the file of the Motor Accident Claims Tribunal (Special Sub Judge No.2) at Salem.

2.The Insurance Company is the Appellant herein, challenging the award passed in MCOP.No.386 of 2016, on the file of the Motor Accident Claims Tribunal (Special Sub Judge No.2) at Salem. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The Insurance Company filed the above Appeal on the point of quantum.

4.During the trial, on the side of the claim Petitioner, PW1 to PW3 were examined, Ex.P1 to Ex.P.20 were marked and on the side of the Respondents,



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RW1 & RW2 were examined and Ex.R1 to Ex.R8 were marked. Ex.C1 & Ex.C2 were marked as court documents.

5.Heard the learned counsel for the Insurance Company/Appellant and learned counsel for the 1st Respondent and perused the available records.

6.Learned counsel for the Insurance Company would contend that PW3/Doctor has given disability certificate fixing the disability at 75%. In view of the order of the Division Bench of this Court in ***The Branch Manger, M/s.TATA AIG General Insurance Co. Ltd., Vs. Prabhu & Another*** reported in ***2016 (1) TNMAC 609***, this Court has directed the claim Petitioner to appear before the Medical Board of Government College Hospital in Salem and it has sent a report fixing the disability at 40%, mentioning the nature of injuries as follows:

“ ® 3-9 ribs

® clavicle, Scapula

(L) humeuis # C2 body typed 2 instability

B/L Sup pubrami # SIS2

Liver injury”

Further the Medical Board assessed the disability as *polytrauma sequelae both*

UL/LL, mentioned the nature of disability as *permanent* with specification as



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difficulty using both UL/LL overhead activities, lifting weights, cross leg sitting and squatting. Accordingly, this Court held that in the said accident, the claim Petitioner has suffered permanent disability, which is in fact has reduced the earning capacity of the claim Petitioner. Hence, this Court has no hesitation to come to the conclusion that the ratio laid down by the Hon'ble Apex Court in the case of **Rajkumar Vs. Ajaykumar & another** reported in **2010 (2) TNMAC 581 SC** is being complied with and adopting multiplier method.

7.The Tribunal has fixed the monthly income at Rs.6,500/-, added 25% towards future prospects, adopted '14' as multiplier. The same are hereby confirmed. Hence, the pecuniary loss sustained by the claim Petitioner is re-assessed as follows:

$$[\text{Rs.6,500/-} + (25\% \text{ of } 6,500\text{-})] \times 12 \times 14 \times 40 \% = \text{Rs.5,46,000/-}$$

8.The Tribunal has awarded a sum of Rs.4,91,177/- towards medical expenses, a sum of Rs.75,000/- towards pain & sufferings, a sum of Rs.15,985/- towards transportation charges, a sum of Rs.20,000/- towards nutrition charges, a sum of Rs.25,000/- towards attender charges and a sum of Rs.500/- towards



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damages to clothes. The same are in accordance with law and the same are hereby confirmed.

9.The Tribunal has awarded a sum of Rs.1,00,000/- towards loss of amenities, the same is reduced to Rs.40,000/-. The Tribunal has awarded a sum of Rs.2,90,000/- towards future medical expenses, as per Ex.P.13 and on perusing the cross examination of the Doctor, the same is reduced to Rs.50,000/-.

<i>S.No</i>	<i>Head</i>	<i>Amount (Rs.)</i>
1	Pecuniary loss	546000
2	Pain and sufferings	75000
3	Loss of amenities	40000
4	Medical expenses	491177
5	Future medical expenses	50000
6	Transportation charges	15985
7	Nutrition charges	20000
8	Attender charges	25000
9	Damages to clothes	500
	Total	1263662
	Rounded off	1263660



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In total, the claim Petitioner is entitled to a sum of Rs.12,63,660/- (Rupees twelve lakh sixty three thousand six hundred and sixty only) and the interest awarded by the Tribunal at the rate of 7.5% per annum is also confirmed.

10.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, reducing the compensation from Rs.20,41,412/- to Rs.12,63,660/- to the extent indicated above. Consequently, connected Miscellaneous Petition is closed. No costs.

(ii) the Insurance Company is directed to deposit the reduced award amount, with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

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

(iv) the Insurance Company is permitted to withdraw the excess amount already



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deposited before the Tribunal, less the reduced award amount, if any, with accrued interest.

25.03.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order
sai

To
The Special Sub Judge No.2
Motor Accident Claims Tribunal
Salem.



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

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Dated: 25.03.2024