IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 02.04.2024

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THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.Nos.2741 and 2742 of 2019

Branch Manager,
M/s.The New India Assurance
Company Limited,
Shevapet Branch Office,
Salem – 2. .. Appellant in both appeals

Vs

1.Gunasekaran .. R1 in C.M.A.No.2741/19

2.Rajeshwari .. R1 in C.M.A.No.2742/19

3.Periyasamy .. R2 in both appeals

Common Prayer: These Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 04.06.2014, made in M.C.O.P.Nos.437 and 285 of 2011 respectively, on the file of the Motor Accident Claims Tribunal, Sub-Court, Dharmapuri.

For Appellant in both appeals : Mr.Michael Visuvasam

For R1 in both appeals : Mr.C.Vishwanath

COMMON JUDGMENT

These appeals have been filed by the Insurance Company challenging the impugned award passed by the Motor Accident Claims Tribunal, Sub-Court, Dharmapuri, in M.C.O.P.Nos.437 and 285 of 2011, dated 04.06.2014. They have challenged only the quantum of compensation, but, not liability to pay the compensation.

C.M.A.No.2741 of 2019:-

2. The following facts are not in dispute with regard to injuries sustained by the claimant/first respondent:-

a) 15x15cm wound over right mid leg with muscle and tibia exposed, moderately contaminated with abnormal mobility of mid leg.

b) 6x4cm laceration on lateral aspect of right heel.

c) 8x6cm laceration on medical aspect of right heel.

d) Absent distal pulse right lower limb with no toe movements. Sensations over toes absent.

e) Tenderness, abnormal mobility, swelling right thigh.

f) Tenderness right forearm with deep abrasion over dorsum of forearm – 10x6cm

g) Abnormal mobility of right ulna present;

h) No neurovascular deficit.

3. Ex.P5, discharge summary issued by Ganga Medical Centre Hospital, Coimbatore, dated 18.02.2011, reveals that amputation was done on the right below knee of the claimant/first respondent on account of grievous injuries sustained by him due to the accident. P.W.3/Dr.S.Krishnakumar, who was examined as a witness, has assessed the claimant's disability at 70%, which has been reduced to 65% by the Tribunal under the impugned award. As seen from the discharge summaries issued by Ganga Medical Centre Hospital, Coimbatore, on 18.02.2011 and 24.02.2011, marked as Exs.P5 & P6, the claimant/first respondent was hospitalized for 11 days. No contra evidence has also been produced by the appellant Insurance Company to disprove the nature of injuries sustained by the claimant/first respondent. Therefore, considering the nature of injuries sustained by the claimant/first respondent, the Tribunal applied multiplier method for assessing compensation towards permanent disability.

4. The appellant Insurance Company is aggrieved by the assessment of monthly income of the first respondent at Rs.10,000/-. The accident had happened in the year 2011. The first respondent had

claimed that he was a Manager-cum-Driver and in his claim petition, he had claimed that he was earning a sum of Rs.15,000/- per month at the time of accident. The first respondent has also filed his salary certificate dated 01.06.2011, which has been marked as Ex.P7, which discloses that the first respondent is earning a sum of Rs.15,000/- per month. However, the claimant/first respondent has not examined his employer to prove that he was drawing salary to the tune of Rs.15,000/- per month at the time of accident. Therefore, on notional basis, the Tribunal has fixed monthly income of the claimant/first respondent at Rs.10,000/-, which, in the considered view of the Court, is correct, as no contra evidence has also been produced by the appellant to disprove the said assessment.

5. The Tribunal has awarded a total compensation of Rs.14,13,000/- as detailed hereunder:-

Permanent disability	-- Rs.12,48,000/-
Pain and suffering	-- Rs.15,000/-
Loss of income	-- Rs.20,000/-
Medical expenses	-- Rs.1,10,000/-
Transportation charges	-- Rs.10,000/-
Extra nourishment	-- Rs.10,000/-

Total **-- Rs.14,13,000/-**

6. After giving due consideration to the overall compensation awarded by the Tribunal to the claimant/first respondent, this Court is of the considered view that the compensation awarded by the Tribunal is just and reasonable, and it cannot be considered to be excessive as claimed by the appellant in this appeal. Therefore, this Court does not find any merit in this appeal.

C.M.A.No.2742 of 2019

7. The appellant Insurance Company has primarily challenged the award on the ground that erroneously, the Tribunal has applied multiplier method for assessing the compensation payable to the claimant/first respondent, instead of assessing the compensation on percentage basis. The injuries sustained by the claimant/first respondent on account of accident, are not disputed by the appellant. The nature of the injuries sustained by the claimant/first respondent are as follows:-

a) Tenderness, swelling, deformity right arm; and

b) Swelling on parietal region of left side of head.

8. As seen from the discharge summary issued by Ganga Medical Centre Hospital, Coimbatore, dated 18.02.2011, marked as Ex.P12, the claimant/first respondent was hospitalized on account of aforesaid injuries for a period of 6 days. It is also seen from the discharge summary/Ex.P12 that on the date of discharge, the claimant/first respondent was comfortable and wound healthy. Therefore, it is noted that the injuries sustained by the claimant/first respondent would not amount to permanent disability, excepting for humerus shaft fracture with butterfly fragment, which has been rectified after treatment. As seen from the discharge summary/Ex.P12, no other serious injuries has been sustained by the claimant/first respondent. However, the Tribunal has erroneously applied multiplier method and has awarded a sum of Rs.3,67,200/- towards permanent disability to the claimant/first respondent. Instead, the Tribunal ought to have assessed the disability compensation of the claimant/first respondent only on percentage basis. The accident had happened in the year 2011. Therefore, considering the year of the accident, the disability compensation has to be fixed at Rs.3,000/- per percentage of disability. In the case on hand, the Doctor assessed the disability of the first respondent/claimant at 35% as seen from the disability certificate dated 15.10.2023, marked as Ex.P17. If

Rs.3,000/- per percentage is taken into consideration, the disability compensation payable to the claimant/first respondent by the appellant will be Rs.1,05,000/-. Apart from the compensation towards permanent disability, the Tribunal has also awarded compensation under various other heads as detailed hereunder:-

Pain and suffering	-- Rs.15,000/-
Loss of income	-- Rs.12,000/-
Medical expenses	-- Rs.30,000/-
Transportation expenses	-- Rs.10,000/-
Extra nourishment	-- Rs.10,000/-
Total	-- Rs.77,000/-

This Court does not find any infirmity in the assessment of compensation with regard to the aforesaid heads. Only with regard to compensation towards permanent disability fixed by the Tribunal at Rs.3,67,200/-, this Court is modifying the same by reducing the compensation payable to the claimant/first respondent to Rs.1,05,000/-, instead of Rs.3,67,200/- awarded by the Tribunal. Accordingly, the compensation awarded by the Tribunal is re-worked in the following manner:-

Permanent disability	-- Rs.1,05,000/-
Pain and suffering	-- Rs.15,000/-
Loss of income	-- Rs.12,000/-
Medical expenses	-- Rs.30,000/-
Transportation expenses	-- Rs.10,000/-
Extra nourishment	-- Rs.10,000/-
Total	**-- Rs.1,82,000/-**

For the foregoing reasons, (a) C.M.A.No.2741 of 2019 is dismissed. It is represented by the learned counsel for the appellant Insurance Company that they have deposited the entire compensation as awarded by the Tribunal. The claimant/first respondent is permitted to withdraw the entire award amount along with accrued interest therein, by moving appropriate application.

(b) C.M.A.No.2742 of 2019 is disposed of and the impugned award passed by the Tribunal in M.C.O.P.No.285 of 2011, dated

04.06.2014, is modified by directing the appellant Insurance Company to pay a sum of Rs.1,82,000/- together with interest at 7.5% per annum from the date of claim petition till the date of realization. It is represented by the learned counsel for the appellant that the entire award amount has already been deposited to the credit of M.C.O.P.No.285 of 2011, on the file of Motor Accidents Claims Tribunal, Sub-Court, Dharmapuri. Since the award amount is reduced by this Court, the appellant Insurance Company is permitted to withdraw the excess amount paid by them as per the impugned award passed by the Tribunal by filling an appropriate application. The claimant/first respondent is permitted to withdraw the amount as awarded by this Court in this order, along with accrued interest therein, by moving appropriate application.

(c) Consequently, connected civil miscellaneous petitions are closed. No Costs.

02.04.2024

Index: yes/no
Speaking/non-speaking
Neutral citation: yes/no
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To

1. The Sub-Court,
   (Motor Accident Claims Tribunal)
   Dharmapuri.

ABDUL QUDDHOSE,J.

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C.M.A.Nos.2741 and 2742 of 2019

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