



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A. (MD)No.514 of 2018

and

CMP (MD)No.6089 of 2018

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The Branch Manager
The Royal Sundaram Alliance Insurance Co Ltd.,
5G, Bus Plaza, 3rd Floor,
Lal Sons Road,
Trichy Cantonment,
Trichy District.

... Appellant/3rd Respondent

Vs.

1.M.Mahalingam

.

... Respondent/Petitioner

2.V.Sathyamurthi

3.M.Malliga

... Respondents 2 & 3/
Respondents 1 & 2

PRAYER: The Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal order dated 31.08.2017 made in M.C.O.P.No.208 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Court), Srivilliputur.

For Appellants : Mr.S.Srinivasa Raghavan

For Respondent-1 : Mr.Jothi Basu

For Respondent-2 : Mr.Allwynfinto Christopher

For Respondent-3 : Mr.SMS. Johny Basha

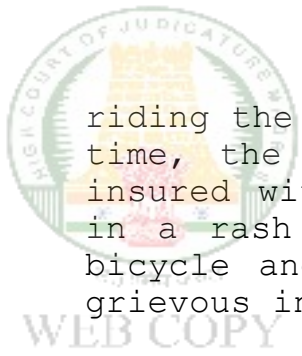
JUDGMENT

This Civil Miscellaneous Appeal has been filed, against the fair and decretal order, dated 31.08.2017 made in M.C.O.P.No.208 of 2011, on the file of the Motor Accident Claims Tribunal (Sub-Court), Srivilliputur.

2. The appellant, who is the Insurance Company, preferred this appeal, challenging the quantum of compensation awarded by the Tribunal.

3. The short facts of the case reads as follows:-

On 23.01.2011, at about 5.45 a.m., when the claimant is



riding the bicycle in Thambipatti - Kottaiyur main road and at that time, the Maruthi Omni Van, bearing Registration No.TN-01-Q-0688, insured with the appellant/Insurance Company, driven by its driver in a rash and negligent manner, dashed against the rider of the bicycle and as a result of which, the claimant sustained multiple grievous injuries.

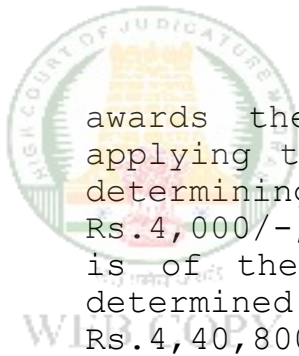
4. On appreciation of oral and documentary evidence, the Tribunal has fixed liability on the owner of the Maruthi Omni Van, which was insured with the appellant/insurance Company, and awarded a total compensation of Rs.4,91,400/-. Aggrieved over the same, the appellant is before this Court with the present appeal.

5. The learned counsel appearing for the appellant would submit that the Tribunal has awarded compensation under two similar heads, one is under the head towards loss of income due to disability, a sum of Rs.1,20,000/- and another one is loss of income and awarded a sum of Rs.3,26,400/-. Questioning that, the present appeal is preferred.

6. According to the appellant, the Tribunal should have either awarded under the head of compensation for loss of income or under the head, loss of income due to disability. In the present case, the Tribunal has awarded compensation under both the heads. Therefore, it is submitted that there is an error in the Judgment of the Tribunal and the same needs reconsideration and hence, praying to set aside the award passed in any one of the heads, by the Tribunal.

7. The learned counsel for the claimant contended that the Tribunal has the power to award compensation both for loss of earning as well as disability suffered by the claimant. In this regard, the learned counsel appearing for the claimant has produced a Judgment of the Hon'ble Supreme Court in **S.Manickam Vs. Metropolitan Transport Corp.Ltd.**, reported in **(2013 (2) TN MAC (SC))**.

8. After considering the submissions of the learned counsels appearing on either side, this Court is of the view that the Tribunal has the power to award compensation under both heads viz., for loss of earning as well as disability suffered by the claimant. The counsel for the appellant also admit the said fact. However, the counsel submitted that in the present case, the claimant has sustained only 40% disability. The Tribunal should have applied its mind and determine the functional disability, while applying the multiplier method. The Tribunal, without assigning any reasons, has mechanically applied multiplier method and awarded 40% as compensation for functional disability. According to him, it is completely an error in the case of functional disability. In view of the non-application of mind on the part of the Tribunal, this Court is inclined to take the functional disability as 30% and



awards the compensation under the head of loss of income, by applying the multiplier method. The Tribunal, for the purpose of determining the loss of income, has fixed the notional income as Rs.4,000/-, including the future prospects. Therefore, this Court is of the view that the loss of income of the injured is re-determined in the manner as $Rs.4,000 \times 12 \times 17 \times 30/100 = Rs.4,40,800/-$.

9.In the present case, this Court has taken the age of the injured as 30 years. Therefore, the multiplier to be adopted is '17'. Therefore, multiplier '17' is applied, while determining the loss of income of the injured. Therefore, this Court is inclined to modify the award of the Tribunal. Accordingly, the Award of the Tribunal is redetermined in the manner as stated below.

S.NO	DESCRIPTION	AMOUNT (RS.)
1	Loss of Income due to permanent disability	120000
2.	Loss of Income	4,40,800
3.	Transportation	2,000
4.	Attendant Charges	3,000
5.	Pain and Suffering	15,000
6	Loss of Amenities	25,000
	TOTAL	6,05,800

10. The amount awarded by the Tribunal is increased from Rs.4,91,400/- to Rs.6,05,800/-.

11.The appellant/insurance company is directed to deposit the entire award amount, now fixed by this Court, along with interest at 7.5% p.a., from the date of claim petition till the date of realisation, 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. Once the amount is deposited, the Tribunal is directed to transfer the entire amount to the account of the claimant, within a period of three weeks thereafter, by way of NEFT.

12.With the above modification, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

MPK

<https://hcservices.ecourts.gov.in/hcservices/>



To

The Subordinate Judge,
Motor Accident Claims Tribunal, Srivilliputur.

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Copy to:

The Record Keeper, (2 Copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.M. LAW OFFICE, Advocate (SR-100006[F] dated 21/11/2019)

+1 CC to M/s.S.M.S JOHNNY BASHA, Advocate (SR-100027[F] dated 21/11/2019)

+1 CC to M/s.S. ALLWYN FINTO CHRISTOPHER, Advocate (SR-100040[F] dated 21/11/2019)

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-100197[F] dated 21/11/2019)

JUDGMENT MADE IN
C.M.A. (MD) No. 514 of 2018
20.11.2019

JMN(17.12.2019) 4P : 8C