

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1979 of 2015

and

M.P.No.1 of 2015

M/s.The New India Assurance
Company Limited
No.7, B.K. building
Ramalinga Mudalya street
Gugai, Salem-6.

... Appellant/2nd Respondent

Vs.

1.K.Palanisamy ...1st Respondent/Petitioner

2.A.Natesan ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.02.2015 made in M.C.O.P.No.628 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.MA.P.Thangavel

Rc : Not Ready in Notice

सत्यमेव जयते
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 20.02.2015 made in M.C.O.P.No.628 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.628 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. The 1st respondent filed the said claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 02.03.2013.

3. According to the 1st respondent, on the date of accident, i.e., on 02.03.2013 at about 4.05 p.m., while the 1st respondent was riding in his motorcycle on the left side of the road towards his residence from Poimankaradu, a Tata Sumo car, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the 1st respondent sustained compound fractures and grievous injuries. Therefore, the 1st respondent filed the claim petition seeking compensation.

4. The 2nd respondent, owner of the car filed counter statement denying the averments made in the claim petition and contended that only the 1st respondent crossed the centre median of the road without noticing the heavy traffic and invited the accident. The 1st respondent is the sole tort-feasor of the accident and the driver of the car belonging to the 2nd respondent is not responsible for the accident.

5. The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and contended that the 1st respondent without observing traffic rules, suddenly crossed the road and invited the accident. As per F.I.R., the time of accident was 16.05 hours, whereas in discharge summary, it was mentioned as 06.15 hours. The 1st respondent did not possess valid driving license at the time of accident. The driver of the car belonging to the 2nd respondent did not possess valid badge to drive the car. The 2nd respondent has violated the permit and policy conditions and therefore, the appellant/Insurance Company is not liable to pay compensation.

6. Before the Tribunal, 1st respondent examined himself as P.W.1, one Dr.Sivalingam was examined as P.W.2 and marked eleven documents as Exs.P1 to P11. No oral and documentary evidence was let in on the side of the appellant/Insurance Company.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said car to pay a sum of Rs.10,49,100/- as compensation to the 1st respondent.

8. Against the said award dated 20.02.2015 made in M.C.O.P.No.628 of 2013, granting compensation to the 1st respondent, the appellant/Insurance Company has come out with the present appeal challenging the quantum of compensation awarded by the Tribunal.

9. The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent was aged 50 years as per Ex.P8/driving license of the 1st respondent, whereas the

Tribunal has erroneously fixed age of the 1st respondent as 40 years. P.W.2/Doctor assessed the disability of the 1st respondent as 60%. The 1st respondent has not proved that he suffered functional disability. The Tribunal without any basis and giving any reason, adopted multiplier method. P.W.2/Doctor is not the Doctor who treated the 1st respondent. P.W.2/Doctor has given disability certificate within three months without giving time for healing the injuries. The guidelines adopted by P.W.2/Doctor was superseded by another guideline issued by the Ministry of Health, Government of India and P.W.2/Doctor has not assessed the disability as per the guidelines issued by the Ministry of Health, Government of India. Ex.P5/discharge summary shows that the fracture sustained by the 1st respondent on his left femur was united properly. The disability assessed by P.W.2/Doctor is not for the whole body. The Tribunal erred in taking into account the said disability for adopting multiplier method. In any event, the compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the 1st respondent/claimant contended that the 1st respondent sustained injuries on his both legs and due to the same, he could not do the work as driver. P.W.2/Doctor has examined the 1st respondent, filed medical records, took x-rays, mentioned the nature of injuries and assessed the disability of the 1st respondent as 60%. In view of the injuries sustained by the 1st respondent, the Tribunal accepted the percentage of disability certified by P.W.2/Doctor and adopted multiplier method by giving valid reason. The total compensation awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the 1st respondent and perused the entire materials available on record.

12.It is the contention of the 1st respondent that in the accident, he sustained fracture and grievous injuries on his both legs. P.W.2/Doctor after examining the 1st respondent, medical records, x-ray, has given details of injuries sustained by the 1st respondent and has deposed that the 1st respondent will find very difficult to do the work, which requires the use of his both legs. Considering the nature of injuries sustained by the 1st respondent, P.W.2/Doctor certified the disability of the 1st respondent as 60%. The appellant/Insurance Company has not examined any Doctor to disprove the evidence of P.W.2/Doctor. Except eliciting in the cross-examination that P.W.2/Doctor was not the Doctor who treated the 1st respondent, the appellant/Insurance Company has not proved that the disability certified by P.W.2/Doctor is on the higher side. The Tribunal

considering the deposition of P.W.2 with regard to nature of injuries and disability suffered by the 1st respondent and in the absence of any contra evidence on the part of the appellant/Insurance Company, accepted the percentage of disability assessed by P.W.2/Doctor. The evidence of P.W.2/Doctor shows that the 1st respondent has suffered functional disability and it will be very difficult for him to do the work by using his both legs. For the above reason, the Tribunal has adopted multiplier method for awarding compensation towards loss of future earning capacity. There is no error in the said finding of the Tribunal warranting interference by this Court.

13.The contention of the learned counsel appearing for the appellant/Insurance Company that the Tribunal erred in fixing age of the 1st respondent as 40 years and applying multiplier 16, has considerable force. The date of birth of the 1st respondent is 15.01.1963 and the accident has occurred on 02.03.2013, which shows that the 1st respondent was aged 50 years at the time of accident. In view of the same, age of the 1st respondent is fixed as 50 years and the correct multiplier applicable is '13'. The 1st respondent has contended that he was working as driver at the time of accident and was earning a sum of Rs.12,000/- per month. The 1st respondent failed to prove the said contention. In the absence of any material evidence to prove the income of the 1st respondent, the Tribunal fixed a sum of Rs.6,000/- as monthly income of the 1st respondent. The accident is of the year 2013 and the monthly income fixed by the Tribunal is not excessive. Thus, the compensation awarded by the Tribunal towards loss of future earning capacity is modified to Rs.5,61,600/- (Rs.6,000/- X 13 X 12 X 60/100). The compensation awarded by the Tribunal under all the other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of future earning capacity	6,91,200	5,61,600	Reduced
2.	Medical bills	2,52,939	2,52,939	Confirmed
3.	Pain and suffering	50,000	50,000	Confirmed

4.	Extra nourishment	10,000	10,000	Confirmed
5.	Transportation	10,000	10,000	Confirmed
6.	Attendant charges	10,000	10,000	Confirmed
7.	Loss of amenities	25,000	25,000	Confirmed
	Total	10,49,139 rounded off to 10,49,100	9,19,539	Reduced by Rs.1,29,561/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.10,49,100/- awarded by the Tribunal is hereby reduced to Rs.9,19,539/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The learned counsel appearing for the appellant/Insurance Company contended that the Insurance Company has already deposited a sum of Rs.6,00,000/- to the credit of M.C.O.P.No.628 of 2013 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. Therefore, the appellant/Insurance Company is directed to deposit the balance award amount along with interest and costs within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the modified award amount now determined by this Court along with interest and costs, after adjusting the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

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To

1.The Additional District Judge
Motor Accident Claims Tribunal
Namakkal.

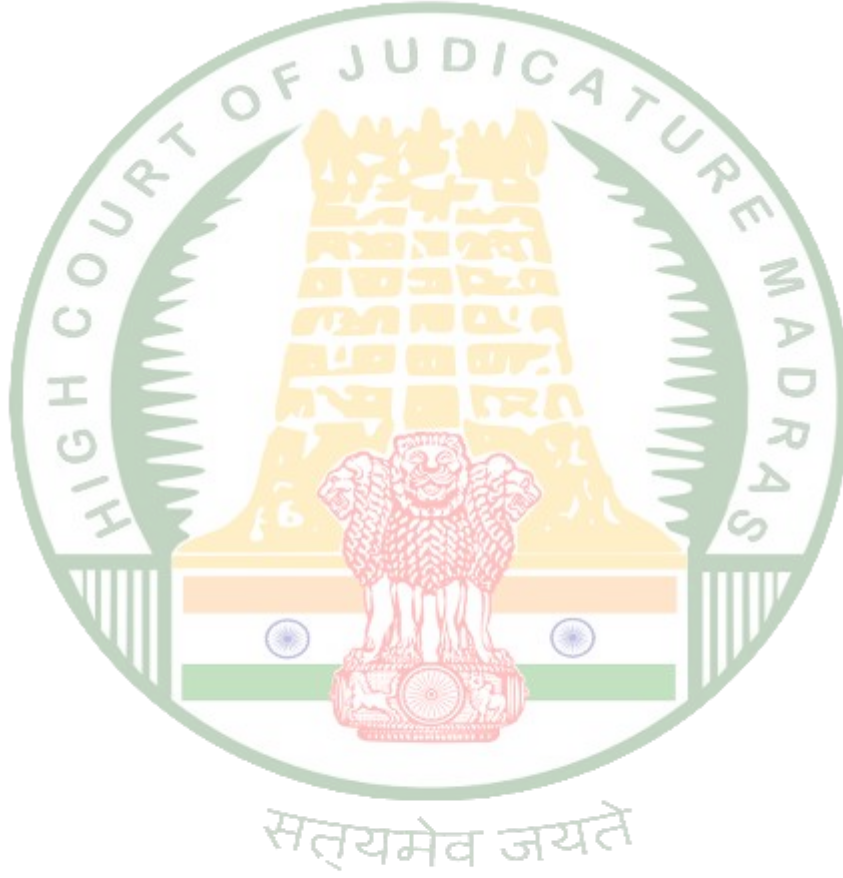
2.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.4896

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.4653

C.M.A.No.1979 of 2015

BR(CO)
GMY(18/08/2020)



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