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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2035 of 2013
and M.P.No.1 of 2013

M/s.The New India Assurance
Company Limited
No.12, New Hospital Road
Gobi-638 452.

... Appellant/3rd Respondent

Vs.

1.A.Raja
2.R.Santhosh Kumar
3.K.Arumugham

... Respondents/Petitioner/Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2012 made in M.C.O.P.No.518 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.IV), Tiruppur.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.M.Lokesh
for Mr.MA.P.Thangavel

For R2 : No appearance

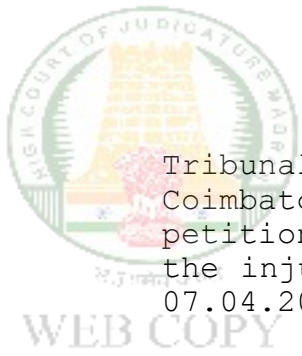
R3 : Exparte before the Tribunal

J U D G M E N T

This matter is heard through "Video-Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 31.01.2012 made in M.C.O.P.No.518 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.IV), Coimbatore at Tiruppur.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.518 of 2009 on the file of Motor Accident Claims



Tribunal, Additional District Court, (Fast Track Court No.IV), Coimbatore at Tiruppur. The 1st respondent filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.04.2009.

3.According to the 1st respondent, on the date of accident i.e., on 07.04.2009 at about 17.30 hours, while the 1st respondent was travelling in a TVS moped near Shanthi Theatre at P.N.Road from North to South direction on the left side of the road, the 2nd respondent drove the minidor auto belonging to the 3rd respondent towards North direction in a rash and negligent manner, dashed against the 1st respondent and caused the accident. Due to the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the respondents 2 and 3 and appellant.

4.The respondents 2 and 3, driver and owner of the minidor auto respectively, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made by the 1st respondent and stated that the 1st respondent has to prove that the 2nd respondent is responsible for the accident. The 1st respondent did not possess badge to drive the goods carriage vehicle and valid driving license at the time of accident, which is in violation of policy conditions. The owner and insurer of the TVS moped were not made as parties to the claim petition and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. The appellant/Insurance Company has also denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.P.Senthilkumar was examined as P.W.2 and marked seven documents as Exs.A1 to A7. The appellant/Insurance Company examined Mr.N.Selvamani and Mr.Eswaran, as R.W.1 and R.W.2 and marked two documents as Exs.B1 and B2.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent, driver of the minidor auto belonging to the 3rd respondent and directed the appellant/Insurance Company being insurer of the said minidor auto to pay a sum of Rs.3,82,365/- as compensation to the 1st respondent at the first instance and recover the same from the 3rd respondent, owner of the minidor auto as the 2nd respondent



did not possess badge to drive the minidor auto.

8. Against the said award dated 31.01.2012 made in M.C.O.P.No.518 of 2009, the appellant/Insurance Company has come out with the present appeal.

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9. Though the learned counsel appearing for the appellant/Insurance Company raised various grounds with regard to liability, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal.

10. The learned counsel appearing for the appellant/Insurance Company contended that the 1st respondent failed to prove that he suffered functional disability and lost his earning capacity. The Tribunal in the absence of any material evidence, erroneously adopted multiplier method and granted compensation. P.W.2/Doctor assessed only physical disability of the 1st respondent as 57.5%. The Tribunal erroneously fixed the same as functional disability and granted compensation by adopting multiplier method. The Tribunal without properly assessing the functional disability and loss of earning capacity, granted compensation by adopting multiplier method. P.W.2/Doctor is not the doctor who treated the 1st respondent and percentage of disability assessed by P.W.2/Doctor is excessive. The Tribunal failed to consider the credibility of the disability assessed by P.W.2/Doctor with reference to nature of injuries and treatment taken by the 1st respondent. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11. Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent was doing net bolding work for Banian Companies, Tirupur, in-charge in ironing and packing section and was earning a sum of Rs.10,000/- per month. Due to the injuries, the 1st respondent has taken treatment in the hospital as in-patient from 07.04.2009 to 28.07.2009 for more than 3 1/2 months. The Tribunal considering the period of treatment taken by the appellant, accepted the version of the 1st respondent that he lost earning capacity, adopted multiplier method and granted compensation, which is in order. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

12. Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for the 2nd respondent either in person or through counsel.

13. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.



14. From the materials on record, it is seen that it is the contention of the appellant that the 1st respondent failed to prove that he suffered functional disability and lost his earning power. P.W.2/Doctor assessed only physical disability of the first respondent as 57.5%. The Tribunal without properly appreciating the evidence of P.W.2/Doctor and disability certificate issued by him, erroneously adopted multiplier method and awarded compensation for loss of earning power. The said contention has considerable force. From the award of the Tribunal, it is seen that the Tribunal adopted multiplier method only on the ground that the 1st respondent took treatment as in-patient in the hospital from 07.04.2009 to 28.07.2009. The said reasoning is erroneous. By taking treatment for 3 ½ months as in-patient in the hospital, the 1st respondent cannot prove that he suffered functional disability and lost his earning capacity. The 1st respondent has to let in acceptable evidence to prove that he suffered functional disability and lost his earning capacity. In the present case, the 1st respondent failed to prove that he suffered functional disability and lost his earning capacity. In view of the same, the 1st respondent is not entitled to compensation by adopting multiplier method for loss of earning power and he is entitled to compensation only by adopting percentage method. P.W.2/Doctor assessed that the appellant has suffered 57.5% disability. The disability is fixed as 58%. The accident is of the year 2009 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, a sum of Rs.1,74,000/- (Rs.3,000/- X 58%) is awarded towards disability.

15. The 1st respondent contended that he was doing net bolding work for Banian Companies, Tirupur, in-charge in ironing and packing section and was earning a sum of Rs.10,000/- per month. The 1st respondent failed to substantiate the said contention. The Tribunal in the absence of any material evidence with regard to income of the 1st respondent, fixed a sum of Rs.3,000/- as his monthly income. The accident is of the year 2009 and the monthly income fixed by the Tribunal is meagre. Hence, a sum of Rs.6,500/- is fixed as monthly income of the 1st respondent. Due to the injuries, he would not have attended his work atleast for six months. Thus, the compensation awarded by the Tribunal towards loss of income during treatment period is modified to Rs.39,000/- (Rs.6,500/- X 6).

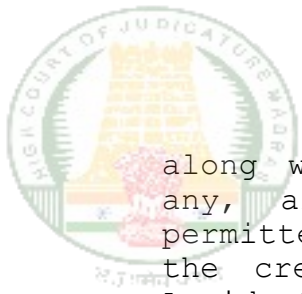
16. According to the 1st respondent, he has taken treatment in the hospital as in-patient from 07.04.2009 28.07.2009 for more than 3 1/2 months. The Tribunal has not awarded any compensation towards attendant charges. Hence, a sum of Rs.30,000/- is awarded towards attendant charges. Considering that the 1st respondent has taken treatment as in-patient in the hospital for 3 ½ months, the amounts granted by the Tribunal



towards pain and suffering, extra nourishment and transportation are hereby enhanced to Rs.30,000/-, Rs.20,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal under all 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 power	3,31,200	1,74,000	Enhanced
2.	Pain and suffering	10,000	30,000	Enhanced
3.	Extra nourishment	5,000	20,000	Enhanced
4.	Transportation	2,000	5,000	Enhanced
5.	Loss of amenities	10,000	10,000	Confirmed
6.	Loss of earning during treatment period	10,000	39,000	Enhanced
7.	Medical expenses	14,165	14,165	Confirmed
8.	Attendant charges	-	30,000	Granted
	Total	3,82,365	3,22,165	Reduced by Rs.60,200/-

17. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.3,82,365/- awarded by the Tribunal is hereby reduced to Rs.3,22,165/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 3rd respondent. On such deposit, the 1st respondent 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. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.518 of 2009 on the file of Motor Accident Claims Tribunal, Additional District Court, (Fast Track Court No.IV), Coimbatore at Tiruppur, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

kj

To

The Additional District Judge
Motor Accident Claims Tribunal
(Fast Track Court No.IV), Tiruppur.

Copy To

The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.39175

+1cc to Mr.MA.P.Thangavel, Advocate SR.No.38986

C.M.A.No.2035 of 2013
and M.P.No.1 of 2013

VBA (CO)
GMY (25/08/2021)