IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020	Pronounced on: 07.12.2020

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.1872 of 2016
& C.M.P.No.13707 of 2016

M/s.The Oriental Insurance Company Limited,
Siva Complex, 2nd Floor, No.22-C, Saradha,
College Main Road, Salem - 636 016.
... Appellant/2nd Respondent

/versus/

1. Parthiban, ...1st Respondent/Claimant
2. Boopathy, ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the decree and judgment dated 18th day of September 2015 made in M.C.O.P.No.11 of 2014 on the file of Motor Accident Claims Tribunal, (Additional District Court), Namakkal.

For Appellant : Mrs.Elveera Ravindran

For R1 : No appearance

For R2 : ex parte

J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed by the Insurance Company being aggrieved by the quantum of compensation awarded to the claimant.

2. The facts of the case is that, on 13.10.2013 near Deva Marriage hall, Seelanaickenpatti to Thashanaickenpatti service road at about 07.15 p.m., when the claimant N.Parthiban was riding his tricycle along the left side of the road towards his resident, a TVS star sports bike bearing registration No.TN-30-AK-0113, driven by his rider rash and negligently came behind the claimant and hit the tricycle. The claimant sustained multiple injury all over his body and compound fracture on his both legs and hands. Since, the accident occurred due to the

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negligence of the motorcycle rider insured under the appellant herein, claim petition was filed seeking Rs.5,00,000/- as compensation. At the time of accident, the claimant was 54 years old, running a beeda stall, earning a sum of Rs.7,000/- per month. Due to his accident, he has lost his earning capacity and had become physically unfit to do any kind of work.

3. The claim was resisted by the Insurance Company on the ground that the claimant was physically handicapped, riding his tricycle, negligently had invited the accident and he has contributed to the accident by his negligence. The claim towards medical expenses and other expenditures are not supported by document. Therefore, claim of Rs.5,000/- is exorbitant.

4. The Tribunal, after considering the oral evidence of the victim and the doctor along with 9 Exhibits marked in support of his claim petition, awarded a sum of Rs.4,42,380/-. The F.I.R (Ex.P.1) and the final report of the police after investigation marked as Ex.P.9 reveals that the two wheeler rider was at fault and caused the accident and therefore, the Tribunal fixed the negligence on the part of the two wheeler rider and held the Insurance Company liable to indemnify the vehicle owner.

5. Based on the wound certificate Ex.P.8 the age of the victim was fixed as 54 years and relying upon the judgment of the Hon'ble Supreme Court rendered in Syed Sadiq vs. Divisional Manager, United India Insurance reported in 2014 (1) TANMAC 459 SC, has held that, notionally fixed the income of the victim as Rs.6,500/- per month.

6. Relying upon the disability certificate marked as Ex.P.7 given by Dr.Sham Sundar examined as P.W.2, the Tribunal has fixed 40% permanent functional disability and had applied multiplier 11.

7. In this appeal, it is specifically contended that the claimant is already person with disability, suffering from polio and he was travelling in a tricycle meant for disabled person. Therefore, the Tribunal ought not to have fixed 40% as permanent functional disability and applied the multiplier. The Tribunal failed to note the fact that the claimant continue his avocation as beeda vendor and has not lost any income or job. When there is no loss of income or job for non-schedule injury, multiplier cannot be applied.

8. The dictum of Raj Kumar vs. Ajay Kumar reported in CDJ 2010 SC 1153, the Hon'ble Supreme Court has clearly explained under what circumstances multiplier method to be adopted to compute compensation for the loss of future earning

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capacity in case of a non-scheduled injury. The dictum of Raj Kumar cited supra, had been misapplied by the Tribunal. It is also contended that the Tribunal went wrong in awarding Rs.25,000/- towards loss of amenity and Rs.10,000/- for attender charges when it is not warranted.

9. This Court, on giving anxious consideration to the submission made by the Learned Counsel for the appellant notice that the claimant had suffered fracture injury and was taking treatment for over one month in a private hospital. He had suffered fracture of left leg and was treated by fixing plates and screw. He is already a disabled person, suffering from polio. Further, fracture on his left leg has put him in deep peril. The Tribunal has taken note of these facts and taking note the disability of 48% assessed by the Doctor, scaled it down to 40% and applied the multiplier method. The point now for consideration is whether 40% disability amounts to functional disability or only physical disability. If the injury being suffered by a normal person, this Court will straight way conclude that it is only a physical disability but in this case the injured is a polio affected person, who have disability by birth and due to that disability, he was making his livelihood by selling beeda. The present injury had aggravated his disability taking away his earning capacity substantially. He now finds difficult to stand for long time, walk and to take hard job. He has deposed that after the accident, he suffer pain on his hip and his movement is substantially restricted.

10. Therefore, this Court holds that application of multiplier and fixation of disability at 40% is appropriate and no error in the Tribunal award. In respect of the other non-conventional heads also the award of the tribunal is fair and just which needs no interference. Hence, this Court finds no merit in this appeal. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bsm
To:-

1.The Motor Accident Claims Tribunal,
(Additional District Court),
Namakkal.

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2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.Ma.P.Thangavel, Advocate Sr.39374

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