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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1589 of 2020

and

C.M.P.No.11748 of 2020

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Branch Office, Ebeneser Garden,
First Floor, Near High School,
Edalapalli, Eranakulam Taluk,
Cochin District, Kerala State,
Pin Code - 682024.

.. Appellant/2nd Respondent

Vs.

1.Ramaprabakaran

...1st Respondent/Petitioner

2.Radhakrishnan

..2nd Respondent/2nd Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 09.09.2019, made in M.C.O.P.No.283 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.S.Arunkumar

For Respondent 1 : Mr.S.P.Yuaraj

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J U D G M E N T

The appellant/insurance company being aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.283 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri, dated 09.09.2019, has filed this appeal before this Court.

2. The case of the first respondent/claimant before the Tribunal is that, on 15.11.2014, while he was riding his two wheeler along with one Mr.Kulandaivelu, the two wheeler owned by the second respondent herein which was insured with the appellant herein came in a rash and negligent manner and dashed against the first respondent/claimant, in which, he suffered multiple fractures in the leg and his left knee and toes were



crushed in the accident. Immediately, he was taken to Pollachi Government Hospital, after getting first aid, he was taken to Ganga Hospital in Coimbatore and he remained inpatient from 15.11.2014 to 05.12.2014, wherein, his four toes were amputated. A surgery was also conducted on the left leg. At the time of the accident, the claimant was 38 years, he was working as a building centering contractor and earning a sum of Rs.40,000/- per month. In view of the accident, he suffered permanent disability and he was not able to discharge his duties. As he has lost his earning capacity, he has filed the claim petition seeking compensation to the tune of Rs.25,00,000/-.

3. The second respondent / owner of the vehicle who dashed against the claimant remained ex parte and the appellant/insurance company contested the claim petition. The appellant/insurance company contended that the negligence is only on the part of the claimant and it is only a contributory negligence and there is no proof of the monthly income of the claimant and also permanent disability which affected the earning capacity of the claimant/first respondent.

4. In order to prove his case, the claimant examined himself as P.W.1 and marked as many as 17 documents and on the side of the appellant/insurance company one Mr.Bakthavatchalam was examined as R.W.1 and no documents were marked on their side. The claimant was referred to the Medical Board and certificate issued by the Medical Board was marked as Ex.C1. After considering the materials available on record, the Tribunal came to the conclusion that the accident had taken place due to the rash and negligent driving of the vehicle belonging to the second respondent herein and there is no policy violation. As his vehicle was insured with the appellant / insurance company, the appellant is liable to pay the compensation.

5. So far as the quantum of compensation is concerned, the claimant was referred to the Medical Board, wherein, the Medical Board assessed the disability at 50%. However, the Tribunal considering the disability at 55%, fixed the monthly income of the claimant as Rs.7,500/-, as he was 38 years old, applying 40% as future prospectus fixed the monthly income as Rs.10,500/-. Further applying the multiplier 17, the loss of future earning capacity was fixed at 11,78,100/-. Apart from the above, the Tribunal has awarded Rs.3,58,477 towards Medical expenses, Rs.8,000/- towards transport expenses, Rs.12,000/- towards extra nourishment and attendant charges, Rs.40,000/- towards pain and sufferings, Rs.40,000/- towards loss of amenities and Rs.1,000/- towards damage to dress and property. The Tribunal awarded a sum of Rs.16,37,577/- as total compensation. Being aggrieved on the same, the appellant / insurance company filed the present appeal.



6. The learned counsel appearing for the appellant/insurance company would submit that the compensation awarded by the Tribunal is on the higher side and excessive. When the Medical Board assessed the disability at 50%, the Tribunal ought not to have fixed the permanent disability at 55% without any evidence whatsoever. That apart, at the time of the accident the claimant was 33 years old and in view of the judgment of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation reported in (2009) 6 SCC 121 the correct multiplier is 16, whereas the Tribunal has fixed the multiplier at 17. That apart, the notional income was fixed at Rs.7,500/- without any evidence whatsoever and it is also on the higher side.

7. The learned counsel appearing for the first respondent/claimant would contend that the claimant at the time of the accident was working as Centering Contractor and his four toes were amputated from his left leg and the entire foot has been crushed in the accident. That apart, he has multiple fracture in the left leg, for which he was admitted to the hospital for nearly one month and undergone series of surgeries. Even though he was earning more than Rs.25,000/- per month, the Tribunal has fixed his monthly income at only Rs.7,500/-. That apart, as per II Schedule of the Motor Vehicles Act, the correct multiplier is 17 and the Tribunal has rightly fixed the multiplier at 17 and awarded the compensation and therefore there is no reason to interfere with the order passed by the Tribunal.

8. I have considered the above submissions and also perused the records carefully.

9. There is no dispute with regard to the finding on negligence. The appellant/insurance company has seriously disputed the percentage of permanent disability and also the multiplier fixed by the Tribunal. On a perusal of the records, it could be seen that after the accident, the claimant was referred to a Medical Board, wherein, the Medical Board after assessing the claimant has given a certificate that he has suffered 50% permanent partial disability. Further, it could also be seen that four toes from the left leg of the claimant has been amputated and he has also undergone surgeries for multiple fractures suffered in the leg. But the Tribunal without any evidence whatsoever simply fixed the disability at 55% and applied the multiplier method. When the Medical Board gave the certificate stating that the disability is 50% permanent partial disability, the Tribunal ought not to have fixed the permanent disability as 55% without any material and without assigning any reason whatsoever. Hence, the order of the Tribunal is liable to be interfered with by this Court. In the absence of any such materials, this Court is of the considered



view that disability should be necessarily fixed at 50%.

10. So far as the monthly income is concerned, the Tribunal considering the nature of the work of the claimant has rightly fixed the income as Rs.7,500/- and the future loss of income fixed at 40%. Hence, it also does not require any interference.

11. So far as the multiplier applied by the Tribunal is concerned, the age of the claimant at the time of the accident is 33 years. As per the judgment of the Hon'ble Supreme Court in Sarla Verma case (cited supra) the correct multiplier should be 16 and not 17. Hence, the multiplier adopted by the Tribunal warrants interference. Therefore, the loss of earning capacity will be Rs.10,500/- x 12 months x 50/100 disability x 16 multiplier = Rs.10,08,000/-. So far as the compensation awarded by the Tribunal on other heads is concerned, there is no need for any interference.

12. In view of the above, the compensation awarded by the Tribunal is modified as follows:

Sl No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced (Rs.)
1.	Loss of earning power	11,78,100	10,08,000	Reduced
2.	Medical expenses	3,58,477	3,58,477	Confirmed
3.	Transport expenses	8,000	8,000	Confirmed
4.	Extra nourishment and attendant charges	12,000	12,000	Confirmed
5.	Pain and sufferings	40,000	40,000	Confirmed
6.	Social Amenities	40,000	40,000	Confirmed
7.	Damage to dress and property	1,000	1,000	Confirmed
	Total	16,37,577	14,67,477	Reduced by Rs.1,70,100

13. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.16,37,577/- is hereby reduced to Rs.14,67,477/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellant / insurance company is directed to deposit the 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 to the credit of M.C.O.P.No.283 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. On such deposit, the first respondent/claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn by making necessary applications before the Tribunal. The first respondent/claimant is entitled to refund of Court fee, in any, on the reduced amount of compensation now determined by this Court. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Sub Court,
The Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.Arun Kumar, Advocate, S.R.No.34613
+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.34606

C.M.A.No.1589 of 2020 and
C.M.P.No.11748 of 2020

SVI(CO)
CB(19/08/2021)
CB(01/09/2021)