IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1545 of 2020
and
C.M.P.No.11455 of 2020

The Manager - Claims,
Cholamandalam MS General Insurance Company Limited,
Dare House, 2nd Floor,
No.2, N.S.C.Bose Road,
Chennai - 600 001.
C/o The Branch Manager,
Cholamandalam MS General Insurance Company Limited,
No.9,1st Floor, Rajaji Road,
State Bank of Travancore Upstairs,
Peramanur, Salem-636007. .. Appellant/2nd Respondent

Vs.

1. Rajan ...1st Respondent/Petitioner
2. M.Muthuraj ..2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decree dated 04.12.2019, made in M.C.O.P.No.407 of 2018, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur.

For Appellant	:	Mr.M.B.Raghavan
For Respondent 1	:	Mr.P.A.Sudeshkumar
For Respondent 2	:	No appearance

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J U D G M E N T

The appellant/insurance company aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, in M.C.O.P.No.407 of 2018, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur, dated 04.12.2019, has filed this appeal before this Court.

2. The case of the first respondent/claimant, before the Tribunal is that, on 02.12.2014, while he was returning in his TVS Moped from Denkanikottai to his native place at Padiginalam village along with his friend, a Tata Sumo car bearing

registration No.KA-35-M-2644, belonging to the first respondent, which was insured with the second respondent, driven in a high speed, came in a rash and negligent manner and dashed against the moped. Due to the same, the claimant was thrown out of the two wheeler and sustained serious injuries. Immediately, both of them were shifted to Government Hospital, Hosur and thereafter, the claimant was referred to Blossom Hospital, Bangalore, for further treatment as he sustained serious injuries in both the legs. The claimant was an Electrician and earning a sum of Rs.20,000/- per month. Due to the injuries sustained in the accident, he suffered permanent disability and he was not able to perform his duties as before, hence he has filed the claim petition seeking compensation to the tune of Rs.30,00,000/-.

3. The second respondent / owner of the vehicle, remained ex parte, and the appellant/insurance company contested the claim petition. The appellant/insurance company contended that the accident had taken place due to the rash and negligent driving of the claimant and he also does not have a valid driving licence to drive the moped. Hence, the insurance company is not liable to pay any compensation and also disputed the monthly income of the claimant and contended that the compensation claimed by the claimant is highly excessive and speculative.

4. Before the Tribunal, in order to prove his case, the claimant examined himself as P.W.1 and marked as many as 10 documents as Exs.P1 to P10. On the side of the appellant/insurance company one Mrs.Karthiga was examined as R.W.1 and two documents were marked as Exs.R1 and R2. The Tribunal, after considering the materials available on record 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. As the driver of the vehicle did not possess a valid driving licence, in violation of the policy condition, hence the appellant/insurance company is liable to pay the compensation and recover the same from the second respondent.

5. The Tribunal has held that the claimant was riding the moped without any licence and that apart the moped was under insurance coverage. Considering all these circumstances, the Tribunal held that the accident had taken place due to the negligence of the driver of the car and fixed the liability on him, however the Tribunal directed the appellant/insurance company to pay the compensation and recover the same from the second respondent owner of the car. So far as the quantum of compensation is concerned, the claimant was referred to the Medical Board for assessment of disability, wherein, the Medical Board assessed the disability at 40% permanent disability and

applying multiplier method awarded a sum of Rs.7,68,000/- towards of loss of earning capacity. Apart from the above, the Tribunal has awarded Rs.10,000/- towards transportation charges; Rs.10,000/- towards nutrition charges; Rs.10,000/- towards attender charges; Rs.50,000/- towards pain and sufferings; Rs.10,000/- towards discomfort, frustration and loss of social enjoyment; Rs.4,36,871/- towards medical bills and Rs.20,000/- towards future medical expenses. Thus, the Tribunal awarded a sum of Rs.13,14,871/- as total compensation. Being aggrieved on the same, the appellant / insurance company filed the present appeal.

6. Heard the learned counsel appearing on either side and also perused the records carefully.

7. The claimant was an Electrician aged about 32 years. As per the discharge summary, which is marked as Ex.P4, it could be seen that he sustained the following injuries:

> "Left Tibia Rt Femur fracture; Rt forearm fracture both bones (poly trauma)."

The Medical Board examined the claimant and assessed his disability at 40%, which has been marked at Ex.P10. The Tribunal treated the disability as permanent disability and came to the conclusion that the claimant suffered loss of future earning capacity on account of permanent disability and applying multiplier method awarded a sum of Rs.7,68,000/-. The appellant insurance company has grievance over it.

8. From a perusal of the medical records and other evidence, it could be seen that the claimant had sustained fracture in the left tibia and fumer and also both the bones in the right forearm. Absolutely, there is no material available on record to show that after taking treatment, the claimant had any incapacity or loss in using a part or both his arms, and he is totally unable to perform any avocation or employment related activities as a result of the injuries sustained in the accident, which requires awarding compensation for loss of future earning on account of permanent disability. Disability suffered by the claimant can only be treated as partial permanent disability as he is still able to engage in gainful activities and he is not totally disabled. In such circumstances, it is not a fit case where multiplier method can be applied to assess the loss of earning capacity. The Tribunal without considering the nature of disability in proper prospective has erred in applying multiplier method and awarded huge compensation. However, considering the fact that the claimant has sustained 40% partial permanent disability, the claimant is entitled for compensation for loss of future earning capacity due to the disability suffered by him. Further, considering his age, the nature of his employment as

electrician, the accident had taken place in the year 2014, a sum of Rs.5000 is awarded per percentage of disability. Hence, the claimant is entitled to get a sum of Rs.2,00,000/- (Rs.5000 x 40% disability) towards loss of future earning capacity instead of Rs.7,68,000/- awarded by the Tribunal.

9. As the claimant was in hospital for long days and also suffered fracture in his hands and legs, towards nourishment a sum of Rs.25,000/- is awarded instead of Rs.10,000/- awarded by the Tribunal; towards attender charges a sum of Rs.25,000/- is awarded instead of Rs.10,000/- awarded by the Tribunal; towards pain and sufferings a sum of Rs.75,000/- is awarded instead of Rs.50,000/- awarded by the Tribunal and towards loss of amenities a sum of Rs.30,000/- is awarded instead of Rs.10,000/- awarded by the Tribunal. So far as the compensation awarded by the Tribunal on other heads are concerned, there is no need for any interference.

10. 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 future earning capacity	7,68,000	2,00,000	Reduced
2.	Transportation charges	10,000	10,000	Confirmed
3.	Nutrition Charges	10,000	25,000	Enhanced
4.	Attender charges	10,000	25,000	Enhanced
5.	Pain and sufferings	50,000	75,000	Enhanced
6.	Discomfort, frustration etc.,	10,000	30,000	Enhanced
7.	Medical bills	4,36,871	4,36,871	Confirmed
8.	Future medical expenses	20,000	20,000	Confirmed
	Total	13,14,871	8,21,871 (Rounded to Rs.8,22,000/-)	Reduced by Rs.4,92,871

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,14,871/- is hereby reduced to Rs.8,22,000/- 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.407 of 2018, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Hosur and recover the same from the second respondent / owner of the vehicle, in the manner known to law. 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. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(ADMN-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Hosur.

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

C.M.A.No.1545 of 2020 and
C.M.P.No.11455 of 2020

SSD(CO)
CB(09/11/2021)