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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.3167 of 2014
and Cross Objection No.6 of 2015
and M.P. No.1 of 2014

C.M.A. No.3167 of 2014

The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai 1.

..Appellant/2nd Respondent

Vs.

1.Balakrishnan ..1st Respondent/Petitioner
2.R. Saravanan .. 2nd Respondent/1st Respondent
(R2 remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.12.2013, made in M.C.O.P. No.664 of 2010, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : M/s. S.R. Sumathy

For Respondents : Mrs. A. Subadra (for R1)
for M/s. M. Malar

Cross Objection No.6 of 2015

Balakrishnan ..Cross Objector/1st Respondent

Vs.

1.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai 1.

2.R. Saravanan ..1st Respondents/Appellant
(R2 remained exparte before the Tribunal.)



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Prayer: This Cross Objection is filed under Order XLI Rule 22 of C.P.C against the judgment and decree dated 13.12.2013, made in M.C.O.P. No.664 of 2010, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Cross Objector : Mrs. A. Subadra
for M/s. M. Malar

For Respondents : M/s. S.R. Sumathy (for R1)

C O M M O N J U D G M E N T

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed by the appellant-Insurance Company against the award dated 13.12.2013, made in M.C.O.P. No.664 of 2010, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

Cross Objection No.6 of 2015 has been filed seeking enhancement of compensation granted by the Tribunal by the award dated 13.12.2013, made in M.C.O.P. No.664 of 2010, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No.664 of 2010, on the file of the V Small Causes Court, (Motor Accident Claims Tribunal), Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.05.2006.

3.The parties are referred to as per their rank in appeal for the sake of convenience.

4.According to the 1st respondent, on the date of accident viz., 01.05.2006, when he was riding his Bicycle along the Somasipalayam lake bridge,Ulunderpet Taluk, Villupuram District, the rider of the Bajaj M-80 Two wheeler bearing Registration No.TN-31-D-2624 belonging to the 2nd respondent came from the opposite direction in a rash and negligent manner and dashed against the 1st respondent and caused the accident. In the accident, the 1st respondent suffered severe injuries all over the body. The accident has occurred due to rash and negligent riding by the rider of the Two wheeler belonging to the 2nd respondent and hence, the 1st respondent filed the claim petition, claiming compensation against the appellant, as insurer and 2nd respondent as owner of the Two wheeler respectively.



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5.The appellant-Insurance Company, filed counter statement and denied all the averments made by the 1st respondent in the claim petition. According to the appellant, the accident did not occur due to rash and negligent riding by the rider of the Two Wheeler belonging to the 2nd respondent and they denied the manner of accident. The rider of the Two wheeler did not possess valid driving license and insurance policy for the said vehicle was not in existence at the time of accident. The 1st respondent has to prove his age, avocation and income, injuries suffered, treatment taken and disability suffered, by documentary evidence to claim compensation. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6.The 2nd respondent remained exparte before the Tribunal.

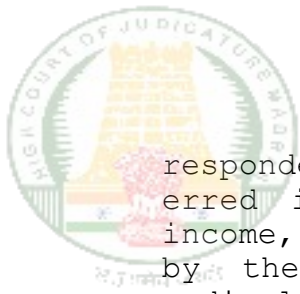
7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined Doctor as P.W.2 and marked 6 documents as Exs.P1 to P6. The appellant did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by the rider of the Two wheeler belonging to the 2nd respondent and directed the appellant as insurer of the said vehicle, to pay a sum of Rs.3,86,000/- as compensation to the 1st respondent.

9.Against the award dated 13.12.2013, made in M.C.O.P. No.664 of 2010, the appellant-Insurance Company has come out with the present appeal.

10.Not being satisfied with the amounts awarded by the Tribunal, the 1st respondent has filed Cross-Objection, seeking enhancement of compensation.

11.The learned counsel appearing for the appellant-Insurance Company contended that the Tribunal erred in fixing the entire negligence on the part of the rider of the Two wheeler belonging to the 2nd respondent, relying upon the evidence of P.W.1. The Tribunal ought to have fixed contributory negligence on the part of the 1st respondent and fixed liability on the owner of the vehicle and apportioned the negligence. The Tribunal erred in accepting the entire partial permanent disability at 40%, as assessed by P.W.2 Doctor, without considering the fact that P.W.2 Doctor is not the Doctor who treated the 1st respondent. The Tribunal erred in fixing the loss of earning power at 25% and awarding Rs.1,95,000/- towards loss of earning power by applying multiplier method, when the earning capacity of the 1st



respondent was not affected due to the accident. The Tribunal erred in relying on the evidence of P.W.1 to fix the age, income, occupation and manner of accident. The amounts awarded by the Tribunal towards transportation, extra nourishment, medical expenses, attendant charges, loss of income and damages to clothes are excessive and prayed for reducing the award amounts.

12.The learned counsel appearing for the 1st respondent contended that in the accident, the 1st respondent sustained fracture of right tibial spine, right radius, head injury and right colles fracture and he has taken treatment as in-patient at Panrutti Government Hospital and Cuddalore Government Hospital from 02.05.2006 to 15.05.2006 and subsequently, as out-patient. P.W.2-Doctor assessed that the 1st respondent suffered 40% disability. The Tribunal erroneously reduced the percentage of disability to 25% and awarded meagre amount towards permanent disability. The 1st respondent was working as a Coolie and was earning a sum of Rs.350/- per day. The Tribunal erroneously fixed meagre amount of Rs.5,000/- per month as notional income of the 1st respondent. The Tribunal failed to award any amount towards mental agony. The amounts awarded by the Tribunal under different heads are meagre. The 1st respondent has also filed Cross Objection and prayed for dismissal of the appeal filed by the Insurance Company and for allowing the Cross Objection filed by the 1st respondent for enhancement of the compensation.

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

14.From the materials on record, it is seen that the Tribunal considering the evidence of 1st respondent as P.W.1, Ex.P1- FIR registered against the rider of the Two wheeler belonging to the 2nd respondent and in the absence of contra evidence on behalf of the appellant, rightly fixed the negligence on the part of rider of the Two wheeler belonging to the 2nd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

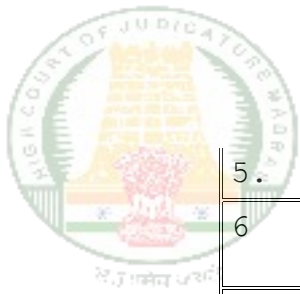
15.As far as the quantum of compensation is concerned, it is the contention of the 1st respondent that due to the accident, he suffered fracture of right tibial spine, right radius, head injury and right colles fracture and has taken treatment as in-patient at Panrutti Government Hospital and Cuddalore Government Hospital from 02.05.2006 to 15.05.2006. P.W.2 Doctor assessed that the 1st respondent suffered 40% partial permanent disability and issued Ex.P5 - disability certificate to that effect. The Tribunal without assigning any reason, erroneously reduced the



percentage of disability to 25% and applied multiplier method to award compensation towards loss of earning power. The 1st respondent has not proved that due to the accident, he lost his earning capacity. In view of the same, the multiplier adopted by the Tribunal is not correct and the 1st respondent is entitled to compensation only by adopting percentage method. The appellant has not let in any contra evidence to disprove the evidence of P.W.2-Doctor and Ex.P5 - Disability Certificate. The accident is of the year 2006. The 1st respondent is entitled to compensation for 40% disability at the rate of Rs.2,000/- per percentage. Thus, the amount awarded by the Tribunal towards loss of earning power is modified to Rs.80,000/- [Rs.2,000/- x 40%].

16. According to the 1st respondent, he was working as a Coolie was earning a sum of Rs.350/- per day. In the absence of material evidence with regard to avocation and income, the Tribunal fixed Rs.5,000/- per month as notional income. Considering the year of accident and nature of work done by the 1st respondent at the time of accident, a sum of Rs.6,500/- per month is fixed as his notional income. Due to the injuries sustained in the accident, the 1st respondent would not have worked atleast for a period of six months. Hence, the amount awarded by the Tribunal towards loss of income is modified to Rs.39,000/- [Rs.6,500/- x 6]. The Tribunal has awarded meagre amounts towards extra nourishment and attendant charges. Considering the nature of injuries and period of treatment taken, the same are enhanced to Rs.10,000/- each. The Tribunal has awarded excess amount of Rs.75,000/- each towards pain and suffering and loss of amenities. Hence, the same are reduced to Rs.50,000/- and Rs.25,000/- respectively. The amounts awarded by the Tribunal under 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
1.	Loss of earning power	1,95,000/-	80,000/-	Reduced
2.	Loss of income	20,000/-	39,000/-	Enhanced
3.	Pain and suffering	75,000/-	50,000/-	Reduced
4.	Extra nourishment	5,000/-	10,000/-	Enhanced



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5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Damages to clothes	1,000/-	1,000/-	Confirmed
7.	Medical expenses	5,000/-	5,000/-	Confirmed
8.	Attendant charges	5,000/-	10,000/-	Enhanced
9.	Loss of amenities	75,000/-	25,000/-	Reduced
	Total	3,86,000/-	2,25,000/-	Reduced by Rs.1,61,000/-

17. In the result, both the appeal and Cross-Objection are partly allowed. The amount awarded by the Tribunal at Rs.3,86,000/- is modified to Rs.2,25,000/- 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, 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.664 of 2010. On such deposit, the 1st respondent is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw excess amount, lying to the credit of M.C.O.P. No.664 of 2010, if the entire award amount has already been deposited. It is made clear that if the 1st respondent/claimant has already withdrawn the award amount, the appellant/Insurance Company is not entitled to recover the same from the 1st respondent/claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa



To

1.The V Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to M/s.M.Malar, Advocate, S.R.No.37212

C.M.A. No.3167 of 2014
and Cross Objection No.6 of 2015
and M.P. No.1 of 2014

VBA (CO)
RGA(10/08/2021)