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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. No.643 of 2014
and M.P. No. 1 of 2014

M/s. United India Insurance Co. Ltd.,
No.1090, Poonamallee High Road,
Chennai 84. ... Appellant/2nd Respondent

Vs.

1.L. Loganathan ...1st Respondent/Claimant

2.G. Padmanabhan ...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.09.2012, made in M.C.O.P. No.4750 of 2008, on the file of the Court of XVI Additional Judge, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. D. Bhaskaran

For Respondents: Mr. T.G. Balachandran (For R1)

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 judgment and decree dated 28.09.2012, made in M.C.O.P. No.4750 of 2008, on the file of the Court of XVI Additional Judge, (Motor Accident Claims Tribunal), Chennai.

2.The appellant is the 2nd respondent in M.C.O.P. No.4750 of 2008, on the file of the Court of XVI Additional Judge, (Motor Accident Claims Tribunal), Chennai. The 1st respondent/claimant 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 22.08.2008.

3.According to the 1st respondent, on the date of accident, when he was riding his Motorcycle bearing Registration No.TN-22-



AZ-9585 at GST road, Palayanur Salai near petrol bunk, the driver of the Lorry bearing Registration No.TN-25-Y-5222 belonging to the 2nd respondent drove the same in opposite direction in a rash and negligent manner and hit against the Motorcycle driven by the 1st respondent and caused accident. In the accident the 1st respondent sustained grievous injuries and pillion rider of the Motorcycle died. The accident occurred only due to rash and negligent driving by the driver of Lorry belonging to the 2nd respondent. Hence, the 1st respondent filed the claim petition, claiming compensation against the 2nd respondent as owner and appellant as insurer of the Lorry.

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

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 negligence on the part of the driver of the Lorry belonging to the 2nd respondent. The 1st respondent has to prove the manner of accident, involvement of Lorry in the alleged accident, driver of the Lorry possessed valid driving license to ply the vehicle on road and the said vehicle was insured with the appellant at the time of accident. The 1st respondent also has to prove his age, avocation and income, injuries sustained, treatment taken and disability suffered 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.Before the Tribunal, the 1st respondent examined himself as P.W.1, examined Doctor as P.W.2 and marked 9 documents as Exs.P1 & P9. The appellant did not let in any oral and documentary evidence.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 2nd respondent and directed the appellant as well as the 2nd respondent to jointly and severally pay a sum of Rs.5,59,000/- as compensation to the 1st respondent.

8.Against the said award of the Tribunal dated 28.09.2012, made in M.C.O.P. No.4750 of 2008, the appellant - Insurance Company has come out with the present appeal.

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



the Tribunal. The learned counsel appearing for the appellant-Insurance Company contended that P.W.2 Doctor did not examine the 1st respondent and assessment of P.W.2 Doctor is highly exaggerated and against medical guidelines. The Tribunal failed to note that the 1st respondent has not proved that his income is reduced and he lost his earning power. The Tribunal erroneously equated disability with loss of earning capacity. The amounts awarded by the Tribunal by applying multiplier method in the absence of any loss of earning power is erroneous. The amounts awarded by the Tribunal under other heads are excessive. The 1st respondent claimed only a sum of Rs.3,00,000/-. The Tribunal awarded excessively a sum of Rs.5,59,000/-, more than the amounts claimed by the 1st respondent and prayed for setting aside the award of the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent suffered fracture and injuries all over the body. P.W.2 Doctor examined the 1st respondent and certified that the 1st respondent suffered 55% disability. The Tribunal reduced the same to 45% and granted compensation only for 45% disability. The 1st respondent was a J.C.P. Operator and due to the accident, he lost his earning power. The Tribunal considering the same, adopted multiplier method. The total compensation awarded by the Tribunal is not excessive. There is no reason to interfere with the award of the Tribunal and prayed for dismissal of the appeal.

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

12.From the materials on record, it is seen that it is the contention of the 1st respondent that he was a J.C.P. Operator and was earning a sum of Rs.9,000/- per month. In the accident, he suffered fracture and multiple injuries all over the body. He has taken treatment as in-patient in Government Stanley Hospital, Chennai, from 23.08.2008 to 16.10.2008, for a period of 55 days. The 1st respondent examined himself as P.W.1 and Doctor as P.W.2 and filed documents to prove the nature of injuries. P.W.2 Doctor examined the 1st respondent and certified that the 1st respondent suffered 55% disability. P.W.2 Doctor has not deposed that due to the injuries, the 1st respondent lost his earning capacity and he suffered functional disability. The 1st respondent also has not deposed that his income is reduced. In the absence of any evidence with regard to loss of earning capacity and loss of income, the multiplier method adopted by the Tribunal is not correct. The 1st respondent is entitled to compensation only by adopting percentage method. The Tribunal reduced the percentage of disability assessed by P.W.2 Doctor from 55% to 45% on the ground that disability would be reduced



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or enhanced by 5%. The reasoning of the Tribunal is not correct. The appellant has not let in any evidence to disprove the evidence of P.W.2 Doctor and disability certificate. Hence, the 1st respondent is entitled to compensation for 55% disability, as assessed by P.W.2 Doctor. The accident is of the year 2008. Hence, the amount awarded by the Tribunal towards disability is modified to Rs.1,10,000/- [55% x Rs.2,000/-], at the rate of Rs.2,000/- per percentage for 55% disability. The Tribunal has granted a consolidated sum of Rs.20,000/- towards transportation, attendant charges and extra nourishment. The same is meagre. The appellant has taken treatment as inpatient in Hospital for a period of 55 days. Considering the nature of injuries, period of treatment taken, the appellant is entitled to compensation separately for transportation, extra nourishment and attendant charges. Hence, a sum of Rs.10,000/- is granted towards transportation, Rs.20,000/- towards extra nourishment and Rs.30,000/- towards attendant charges. The Tribunal has not awarded any amount for loss of amenities and damages to clothes. A sum of Rs.25,000/- is awarded towards loss of amenities and Rs.1,500/- towards damages of clothes. Though the 1st respondent has taken treatment in Government Hospital, he would have spent some amount towards medical expenses. Hence, a sum of Rs.20,000/- is awarded towards medical expenses.

13.The 1st respondent contended that at the time of accident, he was working as a J.C.P. Operator and was earning a sum of Rs.9,000/- per month. He has marked salary slip as Ex.P6 to prove the same. The Tribunal erroneously fixed a sum of Rs.5,000/- per month as notional income of the 1st respondent and granted a meagre sum of Rs.50,000/- towards loss of income. The accident is of the year 2008. Considering the nature of work, a sum of Rs.6,500/- per month is fixed as notional income of the 1st respondent. Due to the injuries, he would not have worked atleast for a period of 12 months. Hence, the amounts awarded by the Tribunal towards loss of income is modified to Rs.78,000/- [Rs.6,500/- x 12 months], at the rate of Rs.6,500/- per month for 12 months. 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.	Disability	4,59,000/-	1,10,000/-	Reduced
2.	Loss of income	50,000/-	78,000/-	Enhanced



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3.	Pain and suffering	30,000/-	30,000/-	Confirmed
4.	Transport, extra nourishment and attendant charges	20,000/-	10,000/- 20,000/- 30,000/-	Enhanced
5.	Loss of amenities	-	25,000/-	Granted
6.	Medical expenses	-	20,000/-	Granted
7.	Damages to clothes	-	1,500/-	Granted
	Total	5,59,000/-	3,24,500/-	Reduced by Rs.2,34,500/-

14. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.5,59,000/- is modified to Rs.3,24,500/- along with 7.5% interest per annum from the date of petition till the date of deposit. The appellant as well as the 2nd respondent are jointly and severally directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, 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.4750 of 2008. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The appellant-Insurance Company as well as the 2nd respondent are permitted to withdraw the amount, lying in the credit of M.C.O.P. No.4750 of 2008, if the entire award amount has already been deposited by them. It is made clear that if the 1st respondent has already withdrawn the entire award amount, the appellant-Insurance Company as well as the 2nd respondent are not entitled to recover the same from the 1st respondent. No costs.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar



gsa
To

1.The XVI Additional District Judge,
(Motor Accident Claims Tribunal),
Chennai.

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

+1cc to Mr.T.G.Balachandran, Advocate Sr.42194

C.M.A. No.643 of 2014

pa[co]
srg 12/08/2021