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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.3251 of 2019 and 1351 of 2020

C.M.A.No.3251 of 2019

N.Balasubramani

... Appellant/Petitioner

Vs.

1.S.Gowri

2.P.Moovarasan

3.Bharti Axa General Insurance Co. Ltd.,
No.162, Anna Salai,
Metro Plaza 2nd Floor,
Chennai - 600006.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2018 passed in M.C.O.P.No.3372 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.K.Suryanarayanan

For Respondents: Mr.K.Poomalai [R3]

C.M.A.No.1351 of 2020

Bharti Axa General Insurance Co. Ltd.,
No.162, Anna Salai,
Metro Plaza, 2nd Floor,
Chennai - 600002.

... Appellant/3rd Respondent

Vs.

1.N.Balasubramani

... 1st Respondent/Petitioner

2.S.Gowri

3.P.Moovarasan
(R2/R1 in main OP remained
ex parte in lower Court, notice
may be dispensed with)

...2 & 3 Respondents/1 & 2 Respondents



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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.09.2018 passed in M.C.O.P.No.3372 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.K.Poomalai

For Respondents: Mr.K.Suryanarayanan [R1]

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

The matter is heard through Video Conference.

2. For the sake of convenience, parties are referred to as 'injured' and 'insurance company'.

3. Not being satisfied with the quantum of compensation awarded by the tribunal in its judgment and decree dated 24.09.2018 passed in M.C.O.P.No.3372 of 2014 on the file of Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, the injured has filed C.M.A.No.3251 of 2019. Questioning the quantum of compensation, insurance company has filed C.M.A.No.1351 of 2020.

4. The brief facts of the case is as follows:

On 03.02.2014 at about 09.30 hours, while the injured was proceeding in his motor cycle bearing Registration No.TN-07-BV-8650 on the Maduravoyal road, a lorry bearing Registration No.TN-09-B-4964 came in a rash and negligent manner and dashed against the motor cycle, owing to which the injured sustained grievous injuries. In the said accident, the injured suffered the following injuries: (i) amputation of right leg below knee; (ii) fracture of both bone right leg; (iii) facial injury; (iv) head injury and (v) multiple injuries all over the body. The injured was admitted as inpatient at Sri Ramachandra Hospital, Chennai and had undergone surgeries. The injured filed a claim petition seeking compensation in a sum of Rs.50,00,000/- as compensation for the injuries suffered by him. The said claim was resisted by insurance company by filing a detailed counter.

5. To prove their claim, on his side, the injured was examined and 12 exhibits were marked. On the side of insurance company, none were examined and no exhibits were marked.

6. On appreciation of materials, the Tribunal found that the accident had occurred owing to the rash and negligent driving of



the lorry. However, the tribunal found that during cross-examination, PW-1 himself admitted that he turned on his right when the lorry came from behind and dashed against his two-wheeler. Hence, the tribunal held that whenever a rider of two-wheeler is taking a right turn, it is his duty to take precautionary measures by showing hand signal or putting indicator and also to see whether any vehicle is coming. On the above finding, the tribunal held that the injured had also contributed some portion of negligence for the accident and fixed 10% contributory negligence on the part of injured and 90% on the part of the driver of the lorry. The tribunal awarded compensation in a sum of Rs.19,24,560/-. The break-up is as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of earning capacity	10,58,400/-
2.	Medical expenses	3,00,000/-
3.	Future medical expenses	2,00,000/-
4.	Loss of martial prospects	2,00,000/-
5.	Pain and suffering	1,00,000/-
6.	Loss of life expectation	1,00,000/-
7.	Permanent disability	1,00,000/-
8.	Loss of amenities	50,000/-
9.	Transport to hospital	10,000/-
10.	Extra nourishment	10,000/-
11.	Attender charges	10,000/-
	Total	21,38,400/-
	Less: 10% contributory negligence	2,13,840/-
	Compensation payable	19,24,560/-

The Tribunal directed the insurance company to pay the compensation along with interest at 7.5 % p.a. from the date of petition till the date of deposit. Not being satisfied with the quantum of compensation, injured has filed C.M.A.No.3251 of 2019. Challenging the quantum of compensation, insurance company has filed C.M.A.No.1351 of 2020.

7. Learned counsel appearing for injured submits that the tribunal has fixed only a sum of Rs.10,000/- as the monthly income of the injured and fixed the disability only at 35%. As per the Workmen's Compensation Act, loss of earning capacity as per Schedule I Part II, Entry No.20 is 50%. Submitting as above, learned counsel prays this Court to fix the monthly income of



the injured at Rs.20,000/- and disability at 50% and accordingly, enhance the compensation. Further, learned counsel for appellant submits that absolutely no evidence was adduced to show that the victim had also contributed negligence to the accident. Hence, 10% negligence fixed by the tribunal on the part of the victim is liable to be set aside.

8. Per contra, learned counsel appearing for insurance company submits that the tribunal has awarded compensation in an exorbitant sum of Rs.10,58,400/- towards loss of earning. Learned counsel submits that the amount awarded under the other heads is also on the higher side. Learned counsel further submits that when the injured himself has deposed that he had taken right turn without giving any signal, the tribunal ought to have fixed 25% contributory negligence on the part of the injured. Submitting as above, learned counsel prays this Court to reduce the award amount.

9. This Court has considered the rival submissions. Perused the materials on record.

10. As a consequence of the accident, the right leg of the injured below knee was amputated. As rightly contended by learned counsel for injured, as per the Workmen's Compensation Act, for the amputation of right leg below knee, the percentage of disability, as per Schedule I Part II, Entry No.20 is 50%. Therefore, this Court fix the disability suffered by the injured at 50%. This Court finds no error on the part of the tribunal in fixing Rs.10,000/- as the monthly income of injured and adding 40% towards future prospects. The correct multiplier to be applied in this case is '18'. Accordingly, the compensation payable under the head loss of earning capacity would be Rs.15,12,000/- $[10000 + 40\% \times 12 \times 18 \times 50\%]$. Since 50% disability has been fixed and compensation has been awarded with proportion to 50%, the amount of Rs.1,00,000/- awarded by the tribunal under the head 'permanent disability' is set aside. As the injured had suffered several injuries, this Court enhances the compensation awarded by the tribunal under the head 'loss of amenities' from Rs.50,000/- to Rs.1,00,000/-. Except this modification, the award of the tribunal under the other heads is hereby confirmed. Further, this Court finds that absolutely no evidence was adduced on the side of the Insurance Company to show that the accident had occurred when the victim, who was riding the two-wheeler, suddenly took the right turn without noticing the vehicle coming behind. Hence, in the absence of any tangible evidence on the side of insurance company, fixing of 10% contributory negligence on the part of the injured is unsustainable. Hence, the finding of the tribunal with regard to 10% contributory negligence on the part of the injured is set aside.



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11. Accordingly, the modified compensation payable would be:

Sl. No.	Compensation awarded under the head	Amount awarded by tribunal	Amount awarded by this Court
		(in Rs.)	
1.	Loss of earning capacity	10,58,400/- [10000+40% *12*18*35%]	15,12,000/- [10000+40% *12*18*50%]
2.	Medical expenses	3,00,000/-	3,00,000/-
3.	Future medical expenses	2,00,000/-	2,00,000/-
4.	Loss of martial prospects	2,00,000/-	2,00,000/-
5.	Pain and suffering	1,00,000/-	1,00,000/-
6.	Loss of life expectation	1,00,000/-	1,00,000/-
7.	Permanent disability	1,00,000/-	-
8.	Loss of amenities	50,000/-	1,00,000/-
9.	Transport to hospital	10,000/-	10,000/-
10.	Extra nourishment	10,000/-	10,000/-
11.	Attender charges	10,000/-	10,000/-
	Total	21,38,400/-	25,42,000/-
	Less: 10% contributory negligence	2,13,840/-	-
	Compensation payable	19,24,560/-	25,42,000/-



In the result,

(i) C.M.A.No.3251 of 2019 is partly allowed. The compensation of Rs.19,24,560/- awarded by the tribunal is hereby enhanced to Rs.25,42,000/- (Rupees Twenty Five Lakhs and Forty Two Thousand only). The Insurance Company is directed to deposit the amount of Rs.25,42,000/- together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, the injured is entitled to withdraw the same along with proportionate interest on due application.

(ii) C.M.A.No.1351 of 2020 is dismissed.

No costs. Connected miscellaneous petition is closed.

Sd/-

Deputy Registrar (AD II)

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Sub Assistant Registrar

Gm

To

The II Judge,
The Motor Accident Claims Tribunal,
Court of Small Causes,
Chennai.

+1cc to Mr.K.Suryanarayanan, Advocate, S.R.No.29750

+1cc to Mr.K.Poomalai, Advocate, S.R.No.29774

C.M.A.Nos.3251 of 2019 and 1351 of 2020

BP(CO)
GN(28/10/2021)