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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2021

Pronounced on : 06.10.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1683 of 2021

M/s. Reliance General Insurance Co.Ltd.,
Reliance House, No.6, 6th Floor,
Haddows Road,
Chennai - 600 034.

... Appellant/2nd Respondent

Versus

1.Vijayakumar

...1st Respondent/Petitioner

2.Jayakumar

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the Judgment and Decree dated 17.12.2019 made in M.C.O.P.No.9048 of 2015 on the file of the Motor Accident Claims Tribunal and Special Sub-Court No.II, Chennai.

For Appellant : Mr.S.Arunkumar

For Ist Respondents : Mr.T.G. Ravichandran,

JUDGMENT

(The matter is heard through "Video Conferencing/Hybrid mode")

The Insurance Company is the appellant herein. Challenging the quantum of compensation awarded on 17.12.2019 in M.C.O.P.No.9048 of 2015, by the Motor Accidents Claims Tribunal, Special Sub-Court No.II, Chennai, the present appeal is filed.

2.The first respondent herein is the claimant before the Tribunal. It is the case of the claimant that on 02.11.2015 at about 21.30 hours, when he was riding his two wheeler bearing Registration No.TN-18-C-1812 from Tamaraipakam Koot road to Thirunindravur, the two wheeler bearing Registration No. TN-18-2772, owned by the second respondent herein and insured with the Insurance Company/appellant herein, came in a rash and negligent



manner from the opposite direction and dashed against him. In the impact, the claimant sustained fracture and grievous injuries all over the body. Hence, the claimant filed a claim petition in M.C.O.P.No.9048 of 2015 before the Tribunal, claiming for a sum of Rs.10,20,000/- as compensation as against the owner of the vehicle as well as the Insurance company/appellant herein.

3.The appellant/Insurance company resisted the claim petition by filing a counter affidavit, in which they have denied the age, avocation and income of the claimant besides contending that the claimant had contributed to the accident. Further, it was stated that the complaint was registered belatedly on 20.11.2015, 18 days after the accident but there is no justifiable reason mentioned in the said complaint for the delay. It was also contended that the injuries sustained by the claimant does not warrant award of compensation as prayed for by the claimant and therefore, the Insurance Company prayed for dismissal of the claim petition.

4.Before the Tribunal, the claimant examined himself as PW.1 and eighteen documents were marked as Ex.P1 to Ex.P18. On the side of the Insurance Company, neither any oral nor documentary evidence was adduced. Ex.C1/Disability Certificate of the claimant was marked as Court exhibit.

5.The Tribunal, after analysing the oral and documentary evidence adduced on either side, come to the conclusion that the accident had taken place due to the rash and negligent driving of the rider of the second respondent's two wheeler bearing Regn.No.TN-18-2272. As regards the quantum, the Tribunal awarded a sum of Rs.10,06,319/- on various heads. Contending that the quantum of compensation awarded by the Tribunal is onerous, the present appeal is filed.

6.According to the learned counsel for the appellant/Insurance Company, the amount awarded towards disability by the Tribunal at Rs.9,45,000/- is enormous and it warrants interference by this Court. Such compensation has been awarded by the Tribunal by solely relying upon the Court evidence Ex.C1/Disability Certificate. However, the Doctor, who issued Ex.C1 was not examined before the Tribunal. While so, the Tribunal ought not to have placed reliance on Ex.C1. Further, the Tribunal ought not to have taken 30% for calculating the loss of earning power. The Tribunal also did not consider that the claimant has not filed any document to prove his income, while so, the Tribunal erred in fixing a sum of Rs.6,500/- as notional income and awarded the compensation by resorting to multiplier method. This is a case of injury where the claimant had suffered only 30% disability, even according to the



Tribunal. While so, the question of awarding compensation by adopting multiplier method is legally not sustainable. Further, he submitted that the assessment of the disability was not followed by the guidelines of the Medical Board. Therefore, the assessment of compensation by the Tribunal is highly excessive and it is not proper and hence, the present appeal is filed by the appellant/Insurance company questioning the quantum.

7. Per contra, the learned counsel for the first respondent submitted that the Tribunal after analysing Ex.P1/First Information Report, Ex.P2/Charge sheet, Ex.P3/Accident Register, Ex.P4/second respondent's Accident Vehicle Report, Ex.P5/Claimant's Vehicle Report, Ex.P6/Wound Certificate, Ex.P10/X-ray and CD (compact disk), Ex.P11/Disability Certificate, Ex.P13/Medical Bills, Ex.P16/Outpatient book, Ex.P17/Future medical expenses summary, and Court evidence of Ex.C1/Disability Certificate, has come to a conclusion that the claimant had suffered functional disability. Therefore, the Tribunal is wholly justified in awarding compensation by resorting to multiplier method. The claimant was admitted in the hospital as an inpatient and underwent surgery for his fractures on shaft of femur and neck of femur fracture in his right leg. According to the learned counsel, the claimant was admitted as outpatient from 02.11.2015 to 14.12.2015, 09.07.2016 to 27.07.2016 and 16.12.2016 to 28.12.2016, which would prove the nature of the injuries sustained by the claimant. Though the Medical Board has assessed that the 1st respondent suffered 40% disability, the Tribunal had taken only 30% as the disability and awarded the compensation amount. Further, the claimant claimed that he is employed as a Lorry driver and earning a sum of Rs.20,000/- per month. But the Tribunal had fixed his notional income only at Rs.6,500/- per month and the same is meagre. The claimant was also directed by the Tribunal to appear before the Medical Board and the Medical Board considering the nature of injuries sustained by the claimant recommended for light duty and assessed his disability at 40%, but the Tribunal has taken only 30% of disability to the claimant, which is fair and proper. The claimant was aged 36 years, at the time of accident and taking note of the same, the Tribunal has awarded a fair and reasonable amount as compensation. Therefore, the learned counsel for the first respondent/claimant prayed for dismissal of the present appeal filed by the appellant/Insurance company.

8. I have heard, the learned counsel appearing on either side and perused the materials available on record.

9. At the outset, it is to be observed that the Insurance Company has not questioned their liability to pay compensation



to the claimant. What is assailed by the Insurance Company in this appeal is only the quantum of compensation awarded by the Tribunal.

10. The claimant was aged 36 years at the time of accident. After the accident, it is stated that he cannot carry on his avocation as a Lorry Driver especially when he had suffered fracture injuries on his leg. The claimant was also examined by the Medical Board and the Medical Board has recorded that the claimant suffered Shaft of femur and Neck of femur Fractures and in their report states that "Fracture shaft of femur with neck of femur. Now has infected nail goes shifts right knee and hip, the disability is 40%". It is also on record that the claimant had been hospitalised on three different spells and during the course of such hospitalisation, he had underwent surgeries for the fractures sustained by him. It is stated that now the claimant is walking with the help of walking stand and he could not sit or stand for a long time. Considering all these aspects, the medical board recommended to assign light work to the claimant in future.

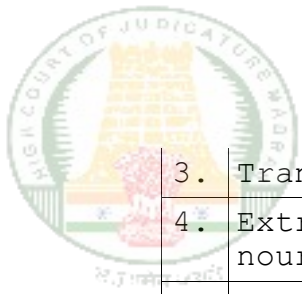
11. It is vehemently contended by the counsel for the appellant that for 30% or 40% disability suffered by the claimant, resorting to award compensation under multiplier method is legally not sustainable. As far as this contention of the learned counsel appearing for the appellant is concerned, the percentage of disability is not the only criteria to adopt multiplier method. The Courts have to consider the nature of injuries and disability suffered by the injured, nature of avocation and the deficiency in continuing his avocation, if any occurred due to the nature of injuries sustained in the accident. In the present case, the 1st respondent in the claim petition has claimed that he was working as Driver and to prove the same, he has marked his driving license as Ex.P12. A perusal of Ex.P12 would reveal that the 1st respondent has obtained driving license for Heavy Motor Vehicles also. This shows that the 1st respondent's was a Driver. Further, as per Ex.C1/disability certificate, the Medical Board has examined the 1st respondent and certified that 1st respondent suffered 40% disability due to "Fracture shaft of femur with neck of femur. Now has infected nail goes shifts right knee and hip". Considering the nature of injuries sustained by the 1st respondent in the accident, it would affect his avocation. Therefore, the multiplier method adopted by the Tribunal for awarding compensation towards loss of earning capacity is proper. At the same time, the Medical Board has not assessed the percentage of disability for whole body. Thus, by converting 1/3rd of the percentage of disability assessed by the Medical Board to whole body, the percentage of loss of earning capacity



of the 1st respondent comes to 13.3% ($40/3 = 13.3$). The 1st respondent claimed that he was earning a sum of Rs.20,000/- per month at the time of accident. Except oral evidence, the 1st respondent has not filed any salary certificate or wage register to prove his income. In the absence of any documentary proof with regard to monthly income, the Tribunal has fixed a sum of Rs.6,500/- per month as notional income of the 1st respondent and the same is meagre. The accident is of the year 2015. Considering the nature of work done by the 1st respondent and year of accident, a sum of Rs.8,000/- per month is fixed as notional income of the 1st respondent. The Tribunal has erroneously granted 40% enhancement towards future prospects for which the 1st respondent is not entitled to. The 1st respondent was aged 36 years and the Tribunal following judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court, [Sarla Verma & others Vs. Delhi Transport Corporation & another] rightly applied multiplier '15'. Thus, by fixing a sum of Rs.8,000/- per month as notional income of the 1st respondent, the compensation awarded by the Tribunal towards loss of earning capacity is modified to Rs.1,91,520/- ($\text{Rs.8,000/-} \times 12 \times 15 \times 13.3/100$).

12. Having regard to the nature of injuries and the period of treatment undergone by him, it would be sufficient to enhance the amount awarded under the head of pain and suffering from Rs.20,000/- to Rs.80,000/-. Taking note of the period of hospitalization, this Court feels to enhance the Transportation charges from Rs.10,000/- to Rs.20,000/-. Accordingly a sum of Rs.10,000/- each awarded towards extra-nourishment and Attendant charges have to be enhanced to Rs.25,000/- each. Based upon the Exs.P1 to P6, and P13/medical bills the amount of Rs.10,319/- awarded by the Tribunal is hereby confirmed. Consequently, the Tribunal did not award any amount towards loss of income during the period of treatment. Considering his age, avocation, date of the accident and the period of treatment, a sum of Rs.80,000/- ($\text{Rs.8,000/-} \times 10$ months) is awarded towards loss of income for ten months under the head of loss of income during the period of treatment. The amount awarded by the Tribunal towards damages to clothes and articles is just and reasonable and hence, the same is confirmed. Thus, this Court proceeds to modify the award of compensation as under:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	9,45,000/-	1,91,520/-	Reduced
2.	Pain and sufferings	20,000/-	80,000/-	Enhanced



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3.	Transportation	10,000/-	20,000/-	Enhanced
4.	Extra nourishment	10,000/-	25,000/-	Confirmed
5.	Damages to Clothes & Articles	1,000/-	1,000/-	Confirmed
6.	Attendant charges	10,000/-	25,000/-	Enhanced
7.	Medical expenses	10,319/-	10,319/-	Confirmed
8.	Loss of Income during the period of treatment	-	80,000/-	Granted
	Total	Rs.10,06,319/- - Rounded off to Rs.10,06,400/- -	Rs.4,32,839/- Rounded off to Rs.4,33,000/-	Reduced by Rs.5,73,400/-

13. In the result, the Civil Miscellaneous Appeal filed by the Insurance Company is partly allowed by modifying the Judgment and Decree dated 17.12.2019 made in M.C.O.P.No.9048 of 2015 on the file of the Motor Accident Claims Tribunal and Special Sub-Court No.II, Chennai.

(i) The compensation awarded by the Tribunal is modified from Rs.10,06,400/- to Rs.4,33,000/- as mentioned above.

(ii) The appellant/Insurance Company is directed to deposit the award amount as determined by this Court together with interest 7.5%, after adjusting amount, if any, already deposited within a period of eight weeks from the date of copy of this Judgment.

(iii) On such deposit being made, the claimant/first respondent is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn.

(iv) There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar



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To

1.The Motor Accident Claims Tribunal
and Special Sub-Court No.II,
Chennai.

2.The Section Officer,
V.R. Section, High Court,
Madras - 104.

+1cc to Mr.S.Arunkumar, Advocate Sr.52374

+1cc to Mr.T.G.Ravichandran, Advocate Sr.52981

C.M.A.No.1683 of 2021
and
C.M.P.No.8936 of 2021

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