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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.No.1918 of 2020

and

C.M.P.No.14184 of 2020

M/s. Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
Haddows Road, Nungambakkam,
Chennai - 600 006.

.. Appellant/2nd Respondent

Vs.

1.Poongavanam

...1st Respondent/Petitioner

2.M.Munusamy

...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.07.2019 made in M.C.O.P.No.5002 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

For Appellant : Mr.S.Arunkumar

For R1 : Mr.Richard Sureshkumar

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed to set aside the award dated 17.07.2019 made in M.C.O.P.No.5002 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai.

2.The appellant is the 2nd respondent in M.C.O.P.No.5002 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her in the accident that took place on 20.06.2015.



3. According to 1st respondent, on 20.06.2015 at about 10.45 hours, while she was travelling as pillion rider in the motorcycle bearing Registration No.TN 03 F 8554 at T.H. Road, opposite to Our Lady School, Thiruvottiyur, the driver of the Mini Lorry bearing Registration No.TN 24 Y 1319, who drove the same in a rash and negligent manner and dashed against the motorcycle in which the 1st respondent was travelling as pillion rider and caused the accident. In the accident, the 1st respondent sustained fracture of left leg, right hand crush injury and multiple injuries all over the body. The 1st respondent has taken first aid treatment in Sugam Hospital and then taken inpatient treatment at Stanley Hospital from 20.06.2015 till filing of the claim petition. Therefore, she filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by her against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the Mini Lorry respectively.

4. 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 Mini Lorry belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.9,80,150/- as compensation to the 1st respondent.

5. To set aside the said award dated 17.07.2019 made in M.C.O.P.No.5002 of 2015, the appellant has come out with the present appeal.

6. Though the appellant has raised a ground 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 and contended that the Regional Medical Board, Government Stanley Hospital, Chennai, has not assessed the percentage of disability for the whole body of the 1st respondent. The Tribunal failed to distinguish between partial permanent disability and functional disability. The 1st respondent has not filed any document to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.6,000/- per month as notional income of the 1st respondent and awarded a sum of Rs.8,42,400/- as pecuniary loss by adopting multiplier method and the same is not correct. The Tribunal in addition to awarding compensation towards pecuniary loss, has awarded a further sum of Rs.50,000/- towards loss of future prospects and the same is erroneous. The amounts awarded by the Tribunal under other heads are highly excessive and prayed for setting aside the award passed by the Tribunal.

7. Per contra, the learned counsel appearing for the 1st respondent contended that in the accident, the 1st respondent



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sustained fracture of left leg, right hand crush injury and multiple injuries all over the body. The Regional Medical Board, Government Stanley Hospital, Chennai examined the 1st respondent and certified that she suffered 90% disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering Ex.C1 and awarded a sum of Rs.8,42,400/- as compensation towards pecuniary loss and the same is proper. At the time of accident, the 1st respondent was aged 45 years, working as Coolie and was earning a sum of Rs.800/- per day. But, the Tribunal has fixed a meagre sum of Rs.6,000/- per month as notional income and awarded compensation. The 1st respondent has taken treatment as inpatient in the Government Stanley Hospital, Chennai from 20.06.2015 to 29.08.2015 for 71 days and the amounts awarded by the Tribunal towards pain and sufferings, transportation, extra nourishment and attendant charges are meagre. The Tribunal considering the entire materials on record, has awarded a sum of Rs.9,80,150/- as compensation to the 1st respondent, which is not excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

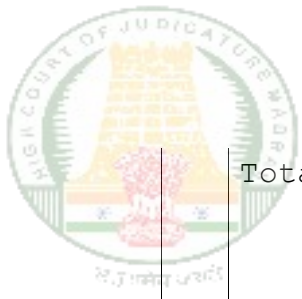
9.From the materials on record, it is seen that in the accident the 1st respondent sustained fracture of left leg, right hand crush injury and multiple injuries all over the body. The Regional Medical Board, Government Stanley Hospital, Chennai examined the 1st respondent and certified that she suffered 90% disability and issued Ex.C1/disability certificate to that effect. The Tribunal considering Ex.C1/disability certificate, fixed the functional disability of the 1st respondent at 90% and awarded compensation for 90% loss of earning capacity and the same is not correct. The Regional Medical Board, Government Stanley Hospital, Chennai assessed the disability of the 1st respondent at 90% and the same is converted to whole body and the loss of earning capacity of the 1st respondent is fixed at 30% for whole body. At the time of accident, the 1st respondent was working as Coolie and was earning a sum of Rs.800/- per day. The 1st respondent has not filed any document to prove her avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal considering the year of accident and nature of work done by the 1st respondent, fixed a sum of Rs.6,000/- per month as notional income of the 1st respondent. The accident occurred in the year 2015 and the monthly income fixed by the Tribunal is meagre. Considering the year of accident, age and nature of work done by the 1st respondent, a sum of Rs.6,500/- per month is fixed as notional income of the 1st respondent. As per Ex.P11/copy of Aadhaar card, 1st respondent was aged 50 years at the time of



accident. The Tribunal following the 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 '13'. Thus, the compensation awarded by the Tribunal towards loss of earning capacity of the 1st respondent is modified to Rs.3,04,200/- (Rs.6,500/- X 12 X 13 X 30/100).

10. From the award passed by the Tribunal, it is seen that the 1st respondent has taken treatment as inpatient in the Government Stanley Hospital, Chennai from 20.06.2015 to 29.08.2015 for 71 days. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal towards pain and sufferings, transportation and attendant charges are meagre and the same are enhanced to Rs.75,000/-, Rs.10,000/- and Rs.25,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities. Due to injuries and disability suffered by the 1st respondent, she would have suffered inconvenience and would be facing discomfort in her life. Therefore, the 1st respondent is entitled to a sum of Rs.30,000/- towards loss of amenities. The amounts awarded by the Tribunal towards medical expenses and loss of future prospects 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 capacity	8,42,400/-	3,04,200/-	Reduced
2.	Pain and sufferings	40,000/-	75,000/-	Enhanced
3.	Extra nourishment	20,000/-	20,000/-	Confirmed
4.	Transportation	5,000/-	10,000/-	Enhanced
5.	Medical expenses	4,987.50/-	4,987.50/-	Confirmed
6.	Attendant charges	17,750/-	25,000/-	Enhanced
7.	Loss of future prospects	50,000/-	50,000/-	Confirmed
8.	Loss of amenities	-	30,000/-	Granted



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Total	Rs.9,80,137.5 0/- Rounded off to Rs.9,80,150/-	Rs.5,19,187.5 0/- Rounded off to Rs.5,19,200/-	Reduced by Rs.4,60,950/-
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11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,80,150/- is hereby reduced to Rs.5,19,200/- 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, 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.5002 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.I, Small Causes Court, Chennai. On such deposit, the 1st respondent 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 appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.5002 of 2015, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-I)

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Sub Assistant Registrar

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To

1. The Special Subordinate Judge No.I,
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

C.M.A.No.1918 of 2020

VBM(CO)
HS(22/07/2021)