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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.04.2021

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1990 of 2016

The New India Assurance Co. Ltd.,
No.45, Moore Street, Chennai-1. .. Appellant/ 2nd Respondent

Vs.

1. Mr.R.Ramanna ... 1st Respondent / Petitioner

2. Mr.K.Boopathy ... 1st Respondents/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 30.07.2014 made in M.C.O.P.No.3351 of 2009 on the file of the Motor Accidents Claims Tribunal (V Judge, Court of Small Causes), Chennai.

For appellant : Mr.M.Krishnamoorthy

For respondents : Mr.V.Mohan Choudary for R-1
R-2 set ex-parte before the Tribunal

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

This appeal is filed by the Insurance Company as against the Award dated 30.07.2014 made in M.C.O.P.No.3351 of 2009 on the file of the Motor Accidents Claims Tribunal (Vth Court of Small Causes), Chennai.

2. The first respondent in this appeal is the claimant before the Tribunal. According to the first respondent/claimant, he along with two other persons, by name Rajagopal and Eronimus, travelled in a Bolero Car bearing Registration No.TN.09.AQ.4467 on 17.04.2019. While so travelling, at about 14.40 hours, a private bus bearing Registration No.TN-67-F-3399 belonging to the second respondent herein and insured with the appellant/Insurance Company, came in a rash and negligent manner and hit the car and thus, caused the accident. In the said accident, all the three who were travelling in the said car, had



sustained injuries. Hence, three separate claim petitions have been filed before the Tribunal, claiming compensation by the respective injured-victims. The first respondent herein filed M.C.O.P.No.3351 of 2009 claiming compensation of Rs.2,80,00,000/-.

3. The claim petition was resisted by the Insurance Company by filing detailed counter statement, denying the age, occupation, etc., of the claimant/injured.

4. The Tribunal had conducted joint trial in all the three claim petitions and came to the conclusion that the accident is the result of the rash and negligent driving of the private bus bearing Registration No.TN-67-F-3399, owned by the second respondent and insured with the appellant/Insurance Company. By coming to such conclusion, the Tribunal passed a common Award in respect of all the claim petitions, awarding respective compensation amounts and in the present claim petition which is under challenge in this appeal, a compensation of Rs.2,49,44,000/- was awarded.

5. In order to prove the claim, on the side of the first respondent/claimant, he examined himself as P.W.3 in the joint trial, apart from P.Ws.1,2 and 4 to 7 were also examined. Exs.P-1 to P-87 were marked on the side of the claimants in the joint trial. On the side of the Insurance Company, neither any oral evidence was adduced, nor any documentary evidence was marked.

6. The Tribunal held that the accident is the result of rash and negligent driving of the driver of the bus and thus passed respective Awards of compensation in each of the claim petition. In the claim petition under this appeal, Rs.2,49,44,000/- was awarded, i.e. in M.C.O.P.No.3351 of 2009 as against the claim of Rs.2,80,00,000/-. The break-up details of the amounts awarded by the Tribunal under various heads are follows:

Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amount awarded (in Rs.)
1	Loss of income for 12 months	8,97,800
2	Transportation	1,50,000
3	Flight charges	36,300
4	Extra-nourishment	3,00,000
5	Attender charges	6,50,000
6	Medical expenses	50,00,000
7	Physiotherapy treatment	4,40,500



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Sl. No.	Heads under which the amounts are awarded by the Tribunal	Amount awarded (in Rs.)
8	Future medical treatment	3,00,000
9	Pain and suffering	3,00,000
10	Disability at 90% at the rate of Rs.2,000/- per percentage	1,80,000
11	Loss of amenities	3,00,000
12	Compensation for shortening of life	50,000
13	Loss of earning capacity	1,63,39,200
	Total	2,49,43,800 rounded off to Rs.2,49,44,000/-

7. The only submission of the learned counsel appearing for the appellant/Insurance Company is that, it is no doubt true that on account of the accident, the injure-victim (first respondent-claimant) had sustained grievous injuries. He had sustained multiple fracture on the spinal cord and all his organs beneath his leg were paralysed and he has become totally bed-ridden. Though the first respondent/claimant is entitled for a reasonable compensation in proportion to the nature of the disability suffered by him, in the present case, the Tribunal had passed exorbitant sum under each heads without assigning any proper reasonings and hence, the amounts awarded under all the heads need proper reduction.

8. Per contra, the learned counsel appearing for the first respondent/claimant submitted that the claimant was working as Senior Manager (PMC) in IVRCL Infrastructures and Projects Limited in Chennai and earning a sum of Rs.55,500/- per month, and now that, he had become totally bed-ridden throughout his life, due to the accident and that without the assistance of a third person, he cannot carry on his life. Under such circumstances, the amounts awarded by the Tribunal under all the heads are reasonable and therefore, there is no need for reduction of the amounts and the learned counsel appearing for the first respondent/claimant therefore prayed for dismissal of the appeal.

9. Keeping in mind the submissions made on either side, we have carefully gone through the entire materials available on record.

10. Considering the gravity of the injuries sustained by the claimant and the nature of disability suffered by him,



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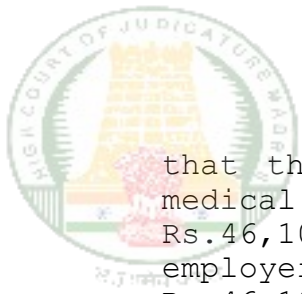
appropriate compensation has to be determined. At the same time, we find that, as contended by the learned counsel appearing for the appellant-Insurance Company, the Tribunal had awarded exorbitant sum under some heads and the same needs proper reduction.

11. So far as the loss of earning capacity is concerned, the Tribunal took the earning of the claimant per month at Rs.74,813/- and adding 30% towards future prospects, the Tribunal determined the actual earning at Rs.97,257/-, based on which, the annual income was calculated at Rs.11,67,084/-. The multiplier that was applied in this case is "14" being the age of the injured at the time of accident was 44 years. Thereafter, the loss of earning was arrived at by the Tribunal at Rs.1,63,39,176/-, which was rounded off by the Tribunal to Rs.1,63,39,200/-, by fixing the disability at 100%.

12. On a perusal of the documents, we find that a sum of Rs.6,000/- in the monthly income of Rs.74,813/- is conveyance reimbursement (voucher payment), and therefore, the said sum cannot be taken as a component of the monthly income and therefore, the said sum of Rs.6,000/- has to be deducted from Rs.74,813/- and if so deducted, the monthly income would be Rs.68,813/-. Thus, the monthly income is fixed at Rs.68,813/-. Considering the age of the injured, who was 44 years at the time of accident, the Tribunal ought to have added only 25% towards future prospects, whereas the Tribunal added 30% towards future prospects. Hence, by adding 25% towards future prospects, the actual monthly income works out to Rs.86,016/- ($68,813 + 25\% \text{ of } 68,813$). The annual loss of income works out to Rs.10,32,192/- ($86,016 \times 12$). If 20% is deducted towards the Income Tax, the resultant amount is Rs.8,25,754/-, which is the actual annual loss of income. If "14" multiplier is applied, the loss of income is arrived at Rs.1,15,60,556/- ($8,25,754 \times 14$). Accordingly, the sum of Rs.1,63,39,200/- awarded by the Tribunal towards loss of earning capacity, is hereby reduced to Rs.1,15,60,556/-.

13. Further, we find that the Tribunal had awarded Rs.8,97,800/- under the head "loss of income for 12 months" ($74,813 \times 12$) ($8,97,750/-$ rounded off to Rs.8,97,800/-). In our considered opinion, since 100% is disability is taken into consideration for multiplier method, the award of Rs.8,97,800/- separately for the loss of income for one year, is not sustainable and the same is set aside.

14. Further, we find that the Tribunal had awarded Rs.50,00,000/- towards medical expenses. Actually, the medical bills marked on the side of the claimant as exhibits, totally amounts only to Rs.46,10,176/-. Therefore, we are of the opinion



that the sum of R.50,00,000/- awarded by the Tribunal towards medical expenses, is not proper. Further, we find that out of Rs.46,10,176/-, Rs.11,77,468/- had been reimbursed by the employer. Therefore, Rs.11,77,468/- has to be deducted from Rs.46,10,176/- and if so deducted, the actual amount incurred for medical expenses is only Rs.34,32,708/-. The same is hereby rounded off to Rs.35,00,000/-. Hence, the sum of Rs.50,00,000/- awarded towards medical expenses, is hereby reduced to Rs.35,00,000/-.

15. The sum of Rs.3,00,000/- awarded by the Tribunal towards future medical expenses, is hereby reduced to Rs.2,00,000/-.

16. The Tribunal has awarded Rs.1,50,000/- towards transportation and apart from this, the Tribunal has also awarded Rs.36,300/- towards flight charges from Kovilpatti Hospital to Chennai. We set aside the said amount of Rs.36,300/- under the said head and consequently, we award consolidated sum of Rs.2,00,000/- towards transportation charges, inclusive of flight charges.

17. Further, we find that the Tribunal has awarded Rs.3,00,000/- towards extra-nourishment and the said amount is reduced to Rs.1,00,000/-.

18. Except the above modification, the amounts awarded by the Tribunal under the other heads are confirmed.

19. Consequently, the amounts awarded by the Tribunal in comparison with the amounts awarded by this Court, are tabulated hereunder:

Sl. No.	Heads under which the amounts are awarded	Amounts awarded (in Rs.) by the Tribunal	Amounts awarded (in Rs.) by this Court
1	Loss of income	8,97,800	-
2	Transportation	1,50,000	2,00,000
3	Flight charges	36,300	-
4	Extra-nourishment	3,00,000	1,00,000
5	Attender charges	6,50,000	6,50,000
6	Medical expenses	50,00,000	35,00,000
7	Physiotherapy treatment	4,40,500	4,40,500
8	Future medical treatment	3,00,000	2,00,000
9	Pain and suffering	3,00,000	3,00,000
10	Disability	1,80,000	1,80,000



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Sl. No.	Heads under which the amounts are awarded	Amounts awarded (in Rs.) by the Tribunal	Amounts awarded (in Rs.) by this Court
11	Loss of amenities	3,00,000	3,00,000
12	Compensation for shortening of life	50,000	50,000
13	Loss of earning capacity	1,63,39,200	1,15,60,556
	Total	2,49,43,800 rounded off to Rs.2,49,44,000/-	1,74,81,056 rounded off to Rs.1,75,00,000/-

20. Thus, the present appeal filed by the Insurance Company is partly allowed. The total compensation awarded by the Tribunal at Rs.2,49,44,000/- is hereby reduced to Rs.1,75,00,000/- (Rupees one crore seventy five lakhs only) with interest @ 7.5% per annum from the date of claim petition till the date of deposit. Further we find that, pursuant to the interim direction given by this Court in C.M.P.No.1811 of 2017 in C.M.A.No.1990 of 2016 and C.M.P.No.14354 of 2016, by order dated 13.03.2017, the Insurance Company had deposited Rs.1,75,00,000/- with interest @ 7.5% per annum, before the Tribunal. Therefore, the first respondent/claimant is permitted to withdraw the said sum with accrued interest and costs as awarded by the Tribunal, after adjusting the amount, if any already withdrawn by the claimant. There shall be no order as to costs in the present appeal.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
Vth Court of Small Causes, Chennai.

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

+2cc to Mr.V.Mohan Choudary, Advocate, S.R.No.26643

+1cc to Mr.M.Krishnanmoorthy, Advocate, S.R.No.26272

C.M.A.No.1990 of 2016

PP(CO)

SB(02/12/2021)