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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.658 of 2013

Divisional Manager,
National Insurance Company Ltd.,
Divisional Office-3, "Mamanji Centre",
S-7, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai-60032

... Appellant/
3rd Respondent in Trial Court

..VS..

1.Chinnapaiyan @ Sengottaiyan

... Respondents/
Petitioner in Trial Court

2.Gushiya Ghose

3.M.A.Palanisamy

... 2 & 3 Respondents/
1st & 2nd Respondent in Trial Court

Prayer:

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 03.08.2012 made in M.C.O.P.No. 358 of 2009, on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Bhavani. Erode District.

For Appellant	: Mr.D.Bhaskaran
For Respondents	: Notice unserved

J U D G M E N T

Dissatisfied with the judgment and decree, dated 03.08.2012, passed by the tribunal awarding compensation of Rs.2,01,302/- along with interest at the rate of 7.5% per annum, the Appellant/ Insurance Company is before this Court to set aside the judgment and decree by the tribunal.

2. It is the case of the claimant/ 1st Respondent herein that on 14.08.2005 at about 12.05 a.m, the claimant and his son



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Dhanasekar were returning by their cart on Mettur to Bhavani Main Road from north to south keeping left cautiously, when they were proceeding near Petrol Bunk, Kuthiraikkalamedu, the 1st respondent/2nd respondent herein drove his vehicle bearing Reg.No. KA-01-AC-2882 in a rash and negligent manner and dashed against the claimant's car. As a result, the claimant and his son thrown out of the cart and sustained grievous injuries. The Claimant/1st Respondent filed a claim petition before the tribunal, claiming compensation of Rs. 3,00,000/- for the disability the injuries sustained by him in the said accident. After analyzing both oral and documentary evidences, the Tribunal has awarded Rs.2,01,302/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization.

3. The learned counsel appearing for the appellant/Insurance company has submitted that the tribunal failed to note that the alleged injuries did not attract any disability and the assessment made by PW2 is against medical guidelines. The tribunal erred in awarding huge sum of Rs.1,62,000/- towards disability without any basis by applying multiplier method, which is not warranted in the present case. The learned counsel for the petitioner further submitted that the tribunal erred in equated the alleged physical disability with loss of earning capacity and the compensation awarded under other heads are also without any basis. Hence the award passed by the tribunal is liable to be set aside.

4. Heard the learned counsel appearing for the appellant/Insurance Company. Notice sent to the 1st respondent, service awaited. Perused the materials available on record.

5. Before the tribunal, on the side of the claimants two witnesses were examined as P.W.1 & P.W.2 and marked ten documents Exhibits P1 to P14. No witness were examined and no documents were marked on the side of the respondents.

6. The specific ground raised by the learned counsel for the appellant/insurance company is that the tribunal has awarded compensation for the disability by adopting multiplier method. It is further contended by the learned counsel for the appellant/insurance company that the Hon'ble Supreme Court in the case of Raj Kumar Vs.Ajaykumar has held that the Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity, unless materials are placed.

7. In the present case also, there are no materials for adopting multiplier method, therefore, this Court is not accepted the calculation made by the tribunal by adopting



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multiplier method and the same is liable to be modified. Accordingly, as per the decision of the Hon'ble Supreme Court cited supra, the compensation awarded by the tribunal for the disability sustained by the claimant at 25% by adopting multiplier method is set aside and the same is modified by taking Rs.3000/- per percentage, which comes to Rs.75,000/-.

8. The learned counsel for the appellant/insurance company fairly submitted that in view of the injuries sustained by the 1st respondent/claimant, he is entitled to some reasonable amount of compensation under other heads. In view of the findings of the Hon'ble Supreme Court cited supra and the submission made by the learned counsel for the appellant/insurance company, it is appropriate for this Court to determine just and fair compensation to the 1st respondent/claimant under various heads.

9. It is seen from the award, as per the medical bills / Ex.P8 and Ex.P13, the tribunal has awarded the compensation of Rs.17,302/- under the head Medical expenses, this Court confirms the same. Considering the period of treatment and injuries sustained by the 1st respondent/claimant, this Court grants a sum of Rs.25,000/- towards Loss of income during treatment period for five months, by fixing Rs.5000/- per month. Further, the tribunal has not awarded compensation towards Loss of amenities and attendant charges, hence a sum of Rs.20,000/- & Rs.15,000/- respectively under the said heads. Likewise, the compensation awarded under other heads viz., Transport expenses, Pain and suffering and Extra Nourishment is also enhanced. Thus, the total compensation awarded by the tribunal is modified by this Court under various heads as follows;

Heads	Compensation granted by the Tribunal Rs.	Compensation modified by this Court
Permanent Disability	1,62,000	75,000
Medical Expenses	17,302	17,302
Transport Expenses	2,000	20,000
Pain and suffering	10,000	14,000
Extra Nourishment	10,000	15,000
Loss of income during treatment period	...	25,000 (5000 x 5)
Loss of Amenity	..	20,000
Attender Charges	...	15,000



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Heads	Compensation granted by the Tribunal Rs.	Compensation modified by this Court
Total	2,01,302/-	2,01,302/-

* 10. In view of the above, the award passed by the tribunal is modified under various heads by this Court without changing the total compensation and rate of interest.

11. It is represented by the learned counsel for the appellant/insurance company that the entire award amount has been deposited before the tribunal. In view of the said submissions, the 1st respondent/claimant is permitted to withdraw the same, by filing appropriate application before the tribunal.

12. In fine, the Civil Miscellaneous Appeal is dismissed. The Judgment and Decree passed by the tribunal in M.C.O.P.No. 358 of 2009 dated 03.08.2012 is confirmed. No costs.

Sd/-
Assistant Registrar

*Corrected as per order dated
20.04.2021 and made herein.

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District Judge,
(Motor Accidents Claims Tribunal)
Bhavani.
2. The Section Officer, VR Section,
High Court, Madras.

1cc to M/s.D.Bhaskaran, Advocate SR.NO.13666

CMA.No.658 of 2013

RLD (CO)
PM/16/11/2021