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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.1187 OF 2018

AND

C.M.P.NO.9762 OF 2018

United India Insurance Co.Ltd.,
4-A, Big Bazaar Street,
Dharapuram,
Tiruppur District.

...Appellant / 3rd Respondent

Vs.

1.Vignesh @ Vigneshkumar

2.Vadivel

3.The Correspondent,
Viveham High Secondary School,
Udumalai Main Road,
Dhalavaipattinam Post,
Dharapuram Taluk, Tiruppur District.
(Respondent 2 & 3 are set ex-parte before
the trial Court, hence notice may be dispensed with)

...Respondents / Petitioner /
Respondents 1 & 2

Prayer : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.12.2017 made in M.C.O.P.No.1115 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Dharapuram.

For Appellant : Mr.C.Paranitharan

For R1 : Ma.P.Thangavel

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the award dated 12.12.2017 made in M.C.O.P.No.1115 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Dharapuram.

2. The appellant is the third respondent in M.C.O.P.No.1115 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Dharapuram. The first respondent filed the said claim



petition, claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him in the accident that took place on 06.08.2013.

3. 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 bus belonging to third respondent and directed both second and third respondents and appellant jointly or severally to pay a sum of Rs.10,11,626.30/- as compensation to the first respondent.

4. Questioning the quantum of compensation awarded by the Tribunal in the award dated 12.12.2017 made in M.C.O.P.No.1115 of 2013, the appellant has come up with the present appeal.

5. The learned counsel for the appellant would contend that the Tribunal has wrongly come to the conclusion that there was negligence on the part of the driver of the second respondent's vehicle and that the multiplier method adopted by the Tribunal is also erroneous, since there was no functional disability sustained by the injured and therefore, the multiplier method cannot be adopted. Therefore, the learned counsel would contend that only when the claimant could not perform any job due to functional disability, the multiplier method can be adopted. In the present case, the Tribunal has erroneously adopted the same and therefore, the same is not sustainable. The learned counsel also would contend that the Tribunal has awarded excess amount towards marriage prospects and loss of comforts which are liable to be reduced.

6. The learned counsel for the first respondent/claimant would contend that the Tribunal has rightly considered all the aspects, including functional disability and the materials available on record and awarded compensation appropriately and therefore, the same does not require any interference.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the entire materials available on record.

8. On a perusal of the award, this Court finds that the Tribunal has considered the fact that the claimant was aged about 20 years at the time of accident and was working as a drumstick broker and earning Rs.9,000/- per month. Though there was no evidence as regards the income, the Tribunal has fixed the notional income at Rs.6,000/- per month. As such, following the dictum of Sarla Verma case, the Tribunal adopted multiplier of '18', taking into consideration the age of the claimant namely 20 years at the time of accident. The Tribunal has also considered Ex.X1-disability certificate which reads as follows:



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"He was diagnosed with right thigh and leg degloving injury with crush injury exposing tendons, right foot degloving injury.

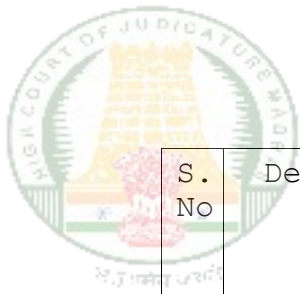
He had undergone following procedures:
Wound debridement with SSG.

At present he has deformed, weakened right lower limb with Ankylosed knee and ankle with sensory disturbance.

His physical disability is partially permanent and assessed as 60% (sixty)"

9. Considering the Ex.X1-disability certificate, this Court is of the view that the Tribunal has rightly come to the conclusion that the claimant has sustained functional disability and adopted the multiplier method and therefore the same does not require any interference. As regards medical expenses, the Tribunal relying on Exs.P1 and P10, has rightly awarded Rs.17,526.30 towards expenses. As regards compensation under loss of comforts and loss of marriages, this Court finds that the claimant has sustained injuries which do not result in loss of comforts and loss of marriage prospects permanently. As such, the compensation awarded under both the heads are hereby set aside. Instead, a sum of Rs.30,000/- is awarded towards loss of amenities. As regards the compensation awarded under the head of disability, it is pertinent to note that the Tribunal has already awarded compensation of Rs.7,77,600/- towards loss of earning by adopting multiplier method and as such, again awarding amount towards disability cannot be sustained and therefore, the compensation awarded under the head disability is hereby set aside. The Tribunal awarded a sum of Rs.4,000/- towards extra nourishment and the same is enhanced to Rs.10,000/-. In other aspects, the compensation awarded by the Tribunal are 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 earnings	7,77,600/-	7,77,600/-	Confirmed
2.	Pain & sufferings	60,000/-	60,000/-	Confirmed
3.	Medical expenses	17,526.30/-	17,526.30/-	Confirmed
4.	Attendant charges	13,500/-	13,500/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
5.	Transportation	4,000/-	4,000/-	Confirmed
6.	Extra nourishment	4,000/-	10,000/-	Enhanced
7.	Loss of comforts	25,000/-	-	Set aside
8.	Loss of amenities	-	30,000/-	Granted
9.	Loss of marriage	50,000/-	-	Set aside
10	Disability	60,000/-	-	Set aside
	Total	Rs.10,11,626.30/-	Rs.9,12,626.30/- Rounded off to Rs.9,12,626/-	Reduced by Rs.99,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,11,626.30/- is hereby reduced to Rs.9,12,626/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd and 3rd respondent and the appellant-Insurance Company are jointly and severally 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.1115 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub-Court, Dharapuram. 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 reduced award amount, lying in the credit of M.C.O.P.No.1115 of 2013, if the entire award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

gbi



To

The Special Subordinate Judge,
Motor Accidents Claims Tribunal, Dharmapuri.

Copy To

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

+1cc to M/s.C.Paranthaman, Advocate Sr.No.64248

+1cc to M/s.Ma.Pa.Thangavel, Advocate Sr.No.64163

C.M.A.No.1187 of 2018

RGN(CO)
RVM(02/03/2022)