



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1623 of 2020

and

C.M.P.No.11926 of 2020

The New India Assurance Company Limited,
Having its Branch Office at
No.20-B, Erode to Kangayam Main Road,
Avalpoondurai Modakkurichi Taluk,
Erode District - 638 115. .. Appellant / 3rd Respondent

Vs.

1.V.Chinnathambi .. 1st Respondent/Claimant

2.A.Nidish

3.R.A.Baby .. Respondents 2 & 3/Respondents 1 & 2
(R2 and R3 were set exparte in
lower Court. Hence, notice to them
is dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.11.2019 made in M.C.O.P.No.665 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.R.Sivakumar

For R1 : Mr.S.P.Yuaraj

J U D G M E N T

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

2.This Civil Miscellaneous Appeal has been filed to set aside the award dated 20.11.2019 made in M.C.O.P.No.665 of 2018



on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

3.The appellant is the 3rd respondent in M.C.O.P.No.665 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.08.2018.

4.According to 1st respondent, on 12.08.2018 at about 09.30 A.M., while he was riding the bicycle on the left side of the Vellode - Chennimalai road from North to South near V.A.O. Office, the driver of the car bearing Registration No.TN 33 BA 8100 owned by 3rd respondent, drove the car in a rash and negligent manner from the opposite direction and dashed against the bicycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent fell down and sustained multiple bone fractures and grievous injuries. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.25,00,000/- as compensation against the respondents 2, 3 and appellant-Insurance Company, being the driver, owner and insurer of the car respectively.

5.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 car owned by 3rd respondent and directed the appellant to pay a sum of Rs.18,80,000/- as compensation to the 1st respondent.

6.To set aside the award dated 20.11.2019 made in M.C.O.P.No.665 of 2018, the appellant has come out with the present appeal.

7.Though the appellant has raised grounds 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 total compensation awarded by the Tribunal is highly excessive. P.W.3/Doctor assessed 30% visual disability and P.W.4/Doctor assessed 57% partial permanent disability. The Tribunal erroneously awarded compensation for 100% loss of earning capacity by adopting multiplier method. In the absence of any



document to prove the avocation and income, a sum of Rs.9,000/- per month fixed by the Tribunal is on the higher side. The 1st respondent has not proved that he suffered functional disability or lost his earning capacity or his income is reduced. In the absence of any document to show that the 1st respondent suffered functional disability, the multiplier method adopted by the Tribunal is without merits. The Tribunal ought not to have awarded compensation for 100% loss of earning capacity when the 1st respondent has not proved the same. The amounts awarded by the Tribunal under different heads are highly excessive and prayed for setting aside the award passed by the Tribunal.

8.Per contra, the learned counsel appearing for the 1st respondent contended that at the time of accident, the 1st respondent was aged 55 years, working as Security at RPP Construction Private Limited, Erode and was earning a sum of Rs.10,000/- per month. In the accident, the 1st respondent sustained comminuted compound fracture frontal/bone with underlying sub arachnoid bleed/contusion, facio maxillary injury, right humerus neck fracture, right lower femur fracture, right upper tibia fracture, left eye vitreous hemorrhage. P.W.3/Doctor examined the 1st respondent and certified that he suffered 30% visual disability and P.W.4/Doctor assessed the permanent disability of the 1st respondent at 57%. The appellant has taken treatment in the Erode Medical Centre Hospital as inpatient from 12.08.2018 to 16.08.2018 and further at Bharani Paventhan Multispeciality Hospital from 16.08.2018 to 29.08.2018. The Tribunal considering the nature of injuries, disability and evidence of P.W.3 & P.W.4/Doctors, granted compensation for 100% loss of earning capacity by adopting multiplier method and the same is proper as the 1st respondent could not do the work as he was doing earlier. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

9.Heard the learned learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

10.It is the case of the 1st respondent that in the accident, he sustained comminuted compound fracture frontal/bone with underlying sub arachnoid bleed/contusion, facio maxillary injury, right humerus neck fracture, right lower femur fracture,



right upper tibia fracture, left eye vitreous haemorrhage and multiple injuries all over the body. To prove the same, the 1st respondent examined P.W.3 & P.W.4/Doctors. P.W.3/Doctor examined the 1st respondent and certified that he suffered 30% visual disability and P.W.4/Doctor assessed the permanent disability of the 1st respondent at 57%. P.W.3/Doctor deposed that the left eye of the 1st respondent is disfigured and he cannot have any normal vision. The Tribunal considering the nature of injuries, disability and evidence of P.W.3 & P.W.4/Doctors, fixed the loss of earning capacity of the 1st respondent at 100% and awarded compensation towards loss of earning capacity by adopting multiplier method. The appellant disputed the disability and contended that percentage of disability assessed by P.W.3 & P.W.4/Doctors are excessive. The appellant has not examined any witness or qualified Medical Practitioner to disprove the evidence of P.W.3 & P.W.4/Doctors and Exs.P20 & P21/disability certificates issued by them. The Tribunal considering the evidence of P.W.3/Doctor that the left eye of the 1st respondent is disfigured and he cannot have any normal vision, held that 1st respondent suffered 100% loss of earning capacity and adopted multiplier method for granting compensation for loss of earning capacity. From the evidence of P.W.3 & P.W.4/Doctors, it is seen that the 1st respondent suffered loss of vision in left eye and Ortho Specialist examined the 1st respondent and certified that he suffered 57% partial permanent disability due to fracture. P.W.3 & P.W.4/Doctors are the Doctors who treated the 1st respondent for the injuries sustained by him. The Tribunal considering the evidence of P.W.3 & P.W.4/Doctors, nature of injuries, Ex.P9/photographs with regard to contention of the 1st respondent, held that disability suffered by the 1st respondent has to be taken as 100% and adopted multiplier method. Considering the materials in entirety, this Court is of the view that compensation granted by the Tribunal by adopting multiplier method need not be interfered with. There is no error in the reasoning of the Tribunal warranting interference by this Court.

11.It is the contention of the 1st respondent that at the time of accident, he was aged 55 years, working as Security at RPP Construction Private Limited, Erode and was earning a sum of Rs.10,000/- per month. Except oral evidence, the 1st respondent has not produced any document to prove his avocation and income. In the absence of any material evidence with regard to avocation and income, the Tribunal fixed a sum of Rs.9,000/- per month as



notional income of the 1st respondent and awarded compensation. The accident is of the year 2018 and the monthly income fixed by the Tribunal is not excessive. The appellant has taken treatment in the Erode Medical Centre Hospital as inpatient from 12.08.2018 to 16.08.2018 and further at Bharani Paventhan Multispeciality Hospital from 16.08.2018 to 29.08.2018. The 1st respondent has undergone 5 surgeries and hence, the amount awarded by the Tribunal towards pain and sufferings is not excessive. The 1st respondent has not produced any medical records to show that he requires future medical expenses. In the absence of any material evidence, a sum of Rs.75,000/- awarded by the Tribunal towards future medical expenses is excessive and the same is reduced to Rs.50,000/-. Considering the nature of injuries, disability, treatment taken by the 1st respondent, this Court is of the view that the amounts awarded by the Tribunal under other heads are not excessive 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 power	11,88,000/-	11,88,000/-	Confirmed
2.	Pain and sufferings	1,50,000/-	1,50,000/-	Confirmed
3.	Medical expenses	4,35,000/-	4,35,000/-	Confirmed
4.	Future medical expenses	75,000/-	50,000/-	Reduced
5.	Attendant charges	10,000/-	10,000/-	Confirmed
6.	Extra nourishment	10,000/-	10,000/-	Confirmed
7.	Transportation	10,000/-	10,000/-	Confirmed
8.	Damages to clothes	2,000/-	2,000/-	Confirmed
	Total	Rs.18,80,000/-	Rs.18,55,000/-	Reduced by Rs.25,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at



Rs.18,80,000/- is hereby reduced to Rs.18,55,000/- 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.665 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode. 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 amount lying in the credit of M.C.O.P.No.665 of 2018, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

krk

To

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

Copy To:

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.18952

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.18539

C.M.A.No.1623 of 2020

SSI(CO)
SB(16/09/2021)