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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.4084 of 2019

and

C.M.P.Nos.23051 of 2019 & 11784 of 2020

M/s. Bharathi Axa General Insurance Company Limited,  
2<sup>nd</sup> Floor, Metro Plaza,  
No.162, Annasalai,  
Chennai - 600 002.

.. Appellant/2<sup>nd</sup> Respondent

Vs.

1. Chandrasekar

.. 1<sup>st</sup> Respondent/Petitioner

2. M.Thirumaravan

..2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

(2<sup>nd</sup> respondent remained exparte before Tribunal.  
Hence, notice to 2<sup>nd</sup> respondent dispensed with)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 30.10.2018 made in M.C.O.P.No.4175 of 2014 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Ms.S.Kumudha  
for Mr.K.Poomalai

For R1 : Mr.T.G.Ravichandran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award dated 30.10.2018 made in M.C.O.P.No.4175 of 2014 on the file of the Motor Accidents Claims Tribunal, VI Small Causes



Court, Chennai.

2.The appellant is the 2<sup>nd</sup> respondent in M.C.O.P.No.4175 of 2014 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. The 1<sup>st</sup> respondent filed the said claim petition, claiming a sum of Rs.9,50,000/- as compensation for the injuries sustained by him in the accident that took place on 13.03.2014.

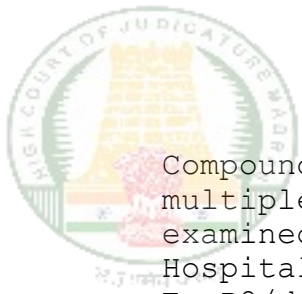
3.According to 1<sup>st</sup> respondent, on 13.03.2014 at about 18.00 hours, while he was waiting on the left side of the Rajaji Salai near Customs Office to cross the road from West to East direction, the driver of the motorcycle bearing Registration No.TN 03 J 5292, drove the motorcycle in a rash and negligent manner and dashed against the 1<sup>st</sup> respondent and caused the accident. In the accident, the 1<sup>st</sup> respondent sustained multiple grievous injuries all over his body. Therefore, the 1<sup>st</sup> respondent filed the said claim petition claiming a sum of Rs.9,50,000/- as compensation against the 2<sup>nd</sup> respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle.

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 motorcycle belonging to 2<sup>nd</sup> respondent and directed the appellant to pay a sum of Rs.7,54,200/- as compensation to the 1<sup>st</sup> respondent.

5.Questioning the quantum of compensation awarded by the Tribunal in the award dated 30.10.2018 made in M.C.O.P.No.4175 of 2014, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that the disability certificate produced by the 1<sup>st</sup> respondent is not issued by the Medical Board or qualified Medical Practitioner following the Guidelines & Gazette Notification issued by the Ministry of Social Justice & Empowerment and Medical Council Notification. The 1<sup>st</sup> respondent has not examined any Doctor to prove the disability suffered by him. The injuries suffered by the 1<sup>st</sup> respondent is not scheduled injury and the assessment of 40% disability is not permanent disability. The 1<sup>st</sup> respondent has not proved that he suffered functional disability and lost his earning power. The Tribunal ought to have awarded lesser amount as compensation. The total compensation awarded by the Tribunal is not in consonance with the facts and circumstances of the case and prayed for setting aside the award passed by the Tribunal.

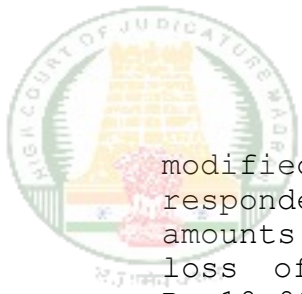
7.Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent contended that the 1<sup>st</sup> respondent suffered Grade IV



Compound # BB left leg, external fixation was done and sustained multiple injuries all over the body. The 1<sup>st</sup> respondent was examined by the Chief Civil Surgeon, Government Peripheral Hospital, K.K.Nagar, Chennai and the Chief Civil Surgeon issued Ex.P8/disability certificate to show that 1<sup>st</sup> respondent suffered 40% disability. The Tribunal erroneously fixed 30% as functional disability instead of 40% and granted lesser amount as compensation. The 1<sup>st</sup> respondent was working as Crane Operator at T & R Agencies, Rajaji Salai, Chennai and was earning a sum of Rs.15,000/- per month and proved the same by marking Ex.P10/driving license. Due to the injuries sustained in the accident, the 1<sup>st</sup> respondent cannot continue his work as Crane Operator. The Tribunal considering the same, adopted multiplier method and awarded compensation under different heads, which are not excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1<sup>st</sup> respondent and perused the entire materials on record.

9.From the materials on record, it is seen that the 1<sup>st</sup> respondent has suffered Grade IV Compound # BB left leg, external fixation was done and multiple injuries all over the body. The 1<sup>st</sup> respondent has taken treatment as inpatient for 7 days in Stanley Medical College Hospital and has produced Ex.P8/disability certificate issued by the Chief Civil Surgeon, Government Peripheral Hospital, K.K.Nagar, Chennai and Ex.P9/passbook issued by the Department of Welfare of the Differently Abled, Government of Tamil Nadu. The 1<sup>st</sup> respondent has not appeared before the Medical Board or not filed any disability certificate issued by Doctor, who treated the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent also did not examine any Doctor to prove Ex.P8/disability certificate, Ex.P9/copy of passbook and that he suffered functional disability and lost his earning power. The Tribunal without any pleadings, oral and documentary evidence, erroneously held that 1<sup>st</sup> respondent suffered 30% disability and granted compensation by adopting multiplier method. Hence, the multiplier method adopted by the Tribunal is liable to be set aside and it is hereby set aside. The 1<sup>st</sup> respondent is entitled to compensation only by adopting percentage method for 40% of disability as per Ex.P8/disability certificate. This Court by the judgment reported in 2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another], fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2014. In view of the same, a sum of Rs.4,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is



modified to Rs.1,60,000/- (Rs.4,000/- X 40% disability). The 1<sup>st</sup> respondent has taken treatment as inpatient for 7 days and the amounts awarded by the Tribunal towards attendant charges and loss of amenities are meagre and the same are enhanced to Rs.10,000/- and Rs.15,000/- respectively. The amounts awarded by the Tribunal under other heads 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 | 6,80,400/-                      | 1,60,000/-                        | Reduced                                |
| 2.    | Pain and sufferings      | 40,000/-                        | 40,000/-                          | Confirmed                              |
| 3.    | Extra nourishment        | 10,000/-                        | 10,000/-                          | Confirmed                              |
| 4.    | Transportation           | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 5.    | Damages to clothes       | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 6.    | Attendant charges        | 2,800/-                         | 10,000/-                          | Enhanced                               |
| 7.    | Medical expenses         | 5,000/-                         | 5,000/-                           | Confirmed                              |
| 8.    | Loss of amenities        | 10,000/-                        | 15,000/-                          | Enhanced                               |
|       | Total                    | Rs.7,54,200/-                   | Rs.2,46,000/-                     | Reduced by Rs.5,08,200/-               |

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,54,200/- is hereby reduced to Rs.2,46,000/- 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.4175 of 2014 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. On such deposit, the 1<sup>st</sup> 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.4175 of 2014, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petitions are closed. No costs.

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Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

krk

To

1. The VI Judge,  
Motor Accidents Claims Tribunal,  
Small Causes Court,  
Chennai.

Copy to:

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

+1cc to Mr.T.G.Ravichandran, Advocate, S.R.No.11955

+2ccs to Mr.K.Poomalai, Advocate, S.R.No.12492 & 12637

C.M.A.No.4084 of 2019

VBM(CO)  
SU(01/10/2021)