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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3238 of 2019

and

C.M.P.No.18851 of 2019

M/s.Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
No.6, Haddows Road, Nungambakkam,
Chennai.

.. Appellant/2nd Respondent

Vs.

1.R.Tamilvanan

...1st Respondent/Petitioner

2.V.Shankar

.. 2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.01.2019 made in M.C.O.P.No.857 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Cuddalore.

For Appellant : Mr.S.Arunkumar

For R2 : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

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 challenging the quantum of compensation granted by the Tribunal in the award dated 22.01.2019 made in M.C.O.P.No.857 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Cuddalore.

3.The appellant is the 2nd respondent in M.C.O.P.No.857 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Cuddalore. The 1st respondent filed the said claim petition, claiming a sum of Rs.40,00,000/- as compensation for the injuries sustained by him in the accident that took place on 04.09.2014.



4. According to 1st respondent, on 04.09.2014 at about 04.00 hours, while he was driving the motorcycle bearing Registration No.PY 01 AB 3250 along with a pillion rider from South to North on the extreme left side of the Cuddalore Main Road, opposite to Ponni Hotel, Murungapakkam, Puducherry, the driver of the Tata Indico Car bearing Registration No.TN 31 BU 6214 owned by 2nd respondent, drove the car in a rash and negligent manner without sounding horn from the opposite direction and dashed against the motorcycle driven by the 1st respondent and caused the accident. In the accident, the 1st respondent suffered fracture of both bones of right leg, fracture of Rt calcaneum, crush injury on the right leg exposing tendons and multiple injuries all over the body. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.40,00,000/- as compensation against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the car.

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 2nd respondent and directed the appellant to pay a sum of Rs.15,09,000/- as compensation to the 1st respondent.

6. Questioning the quantum of compensation awarded by the Tribunal in the award dated 22.01.2019 made in M.C.O.P.No.857 of 2015, the appellant has come out with the present appeal.

7. The learned counsel appearing for the appellant contended that the Tribunal failed to note the physical disablement assessed to the whole body indicated that loss of earning power cannot exceed 28%. The Medical Board assessed 28% disability for whole body and the Tribunal erroneously fixed the disability of the 1st respondent at 40%, adopted multiplier method and awarded compensation for loss of earning capacity. The Tribunal in addition to granting compensation for loss of earning capacity, in the absence of any evidence, erroneously granted 50% enhancement towards future prospects. The 1st respondent has not let in any evidence to show that he lost his earning capacity or suffered functional disability and due to the same he could not continue his work as before or his earning power was reduced. In the absence of any evidence to show that the earning power of the 1st respondent is reduced, the multiplier method adopted by the Tribunal for awarding compensation towards loss of earning power is not correct. The amounts awarded by the Tribunal towards pain and sufferings, loss of amenities, loss of family prospects, loss of income, future medical expenses, transportation, extra nourishment and attendant charges are 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 28 years, doing Tiles Work and also having Mutton Stall and was earning a sum of Rs.25,000/- per month. In the accident, his right leg is completely crushed and the Medical Board examined the 1st respondent and certified that 1st respondent suffered 28% disability. The Tribunal converted the disability to whole body and fixed the disability of the 1st respondent at 40% and granted compensation 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 towards pain and sufferings, loss of amenities, loss of family prospects, loss of income, future medical expenses, transportation, extra nourishment and attendant charges 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.

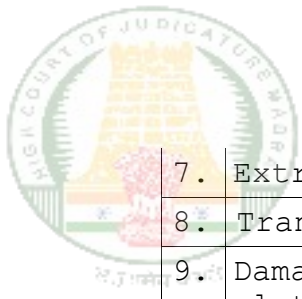
10. It is the case of the 1st respondent that in the accident, he suffered fracture of both bones of right leg, fracture of Rt calcaneum, crush injury on the right leg exposing tendons and multiple injuries all over the body. The 1st respondent was referred to Medical Board and the Medical Board examined the 1st respondent and certified that 1st respondent suffered 28% permanent physical impairment and issued Ex.C1/disability certificate to that effect. The Tribunal erroneously fixed the disability of the 1st respondent at 40% for whole body and adopted multiplier method. The 1st respondent has not examined any Doctor to show that he suffered functional disability or he cannot continue his avocation as he was doing before or his income has been reduced. He has also not filed any document to show that he lost income and earning capacity. In the absence of documents and materials, the Tribunal erroneously applied multiplier method and granted compensation for loss of earning capacity. In addition to that the Tribunal granted a sum of Rs.3,06,000/- towards 50% of future income, Rs.90,000/- for loss of income for one year. In the absence of any evidence with regard to functional disability, loss of income, disability and loss of earning capacity, the 1st respondent is not entitled to compensation for future loss of income and disability by adopting multiplier method. The Medical Board examined the 1st respondent and certified that 1st respondent suffered 28% disability. The 1st respondent is not entitled to compensation towards disability by adopting multiplier method and the 1st respondent is entitled to compensation towards disability only by adopting percentage method. 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.1,12,000/- (Rs.4,000/- X 28% disability). In view of the same, the amounts awarded by the Tribunal towards disability and future loss of income is liable to be set aside and it is hereby set aside. Further, the Tribunal has granted a sum of Rs.2,00,000/- for mental agony and marital prospects for which the 1st respondent is not entitled to and in view of the same, the amount awarded by the Tribunal towards mental agony and marital prospects is liable to be set aside and it is hereby set aside.

11.From the award passed by the Tribunal it is seen that the 1st respondent has taken treatment in the Jipmer Hospital, Pondicherry as inpatient from 04.09.2014 to 08.09.2014, Stanley Medical College Hospital, Chennai from 08.09.2014 to 15.12.2014 and further at Jipmer Hospital, Pondicherry as inpatient from 17.01.2015 to 12.02.2015, 30.04.2015 to 26.05.2015 and underwent surgeries. Considering the nature of injuries and period of treatment taken by the 1st respondent, this Court is of the view that the amounts awarded by the Tribunal for attendant charges is meagre and the same is enhanced to Rs.1,00,000/-. 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 power	6,12,000/-	-	Set aside
2.	Future loss of income	3,06,000/-	-	Set aside
3.	Pain and sufferings	75,000/-	75,000/-	Confirmed
4.	Loss of amenities	75,000/-	75,000/-	Confirmed
5.	Mental agony & Marital prospects	2,00,000/-	-	Set aside
6.	Attendant charges	25,000/-	1,00,000/-	Enhanced



7.	Extra nourishment	25,000/-	25,000/-	Confirmed
8.	Transportation	25,000/-	25,000/-	Confirmed
9.	Damages to clothes	1,000/-	1,000/-	Confirmed
10.	Future medical expenses	75,000/-	75,000/-	Confirmed
11.	Loss of income	90,000/-	90,000/-	Confirmed
12.	Disability	-	1,12,000/-	Granted
	Total	Rs.15,09,000/-	Rs.5,78,000/-	Reduced by Rs.9,31,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,09,000/- is hereby reduced to Rs.5,78,000/- 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.857 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Cuddalore. 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.857 of 2015, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-
Deputy Registrar (CLAA)

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Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Cuddalore.



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

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+1cc to Mr.S.Arunkumar, Advocate, S.R.No.16774

+1cc to Mr.A.N.Viswanatha Rao, Advocate, S.R.No.17095

C.M.A.No.3238 of 2019

VBM(CO)

CB(17/11/2021)