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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 29.06.2021	DELIVERED ON: 23.07.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.NO.2918 OF 2014

AND

M.P.NO.1 OF 2014

New India Assurance Company Limited,
No.46, Armenian Street,
Chennai - 600 001.

.. Appellant/2nd Respondent

.Vs.

1.V.Jai Krishnan

.. Respondent/Petitioner

2.A.Poonga

.. 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 27.09.2013 made in M.C.O.P.No.2876 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr.N.Vijayaraghavan

For R1 : Mr.P.Chinnaraj

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed against the award dated 27.09.2013 made in M.C.O.P.No.2876 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai.



2.The appellant is the 2nd respondent in M.C.O.P.No.2876 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. The 1st respondent filed the said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 22.05.2011.

3.According to 1st respondent, on 22.05.2011 at about 23.50 hours, while he was walking in the Waltax Road from North to South in front of Hotel Vikram, the rider of the motorcycle bearing Registration No.TN 09 BE 0228, who was driving the motorcycle from North direction, came in a rash and negligent manner and dashed behind the 1st respondent and caused the accident. In the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the owner and insurer of the motorcycle respectively.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the rider of the motorcycle belonging to 2nd respondent and directed the appellant-Insurance Company to pay a sum of Rs.12,75,000/- as compensation to the 1st respondent.

5.Questioning the quantum of compensation granted by the Tribunal in the award dated 27.09.2013 made in M.C.O.P.No.2876 of 2011, the appellant has come out with the present appeal.

6.The learned counsel appearing for the appellant contended that the total compensation awarded by the Tribunal at Rs.12,75,000/- is excessive. The Tribunal erred in assessing the percentage of disability of the 1st respondent at 75% and awarded a sum of Rs.1,50,000/- for disability and the same is exaggerated as well as not in proportion to the actual injuries sustained by him. The Tribunal in addition to awarding compensation for disability on percentage basis, erroneously awarded a sum of Rs.7,56,000/- towards loss of earning power by adopting multiplier method, when P.W.2/Doctor himself has let in evidence that the 1st respondent can continue his work. The amounts awarded by the Tribunal for pain and sufferings, loss of amenities and loss of longevity of life are highly excessive and the 1st respondent is not entitled to the same. The 1st respondent is not entitled to compensation for disability by applying both percentage and multiplier method. The 1st respondent has not proved his avocation and income by producing valid documents. In

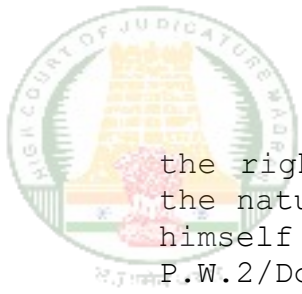


the absence of documentary proof with regard to avocation and income, a sum of Rs.4,500/- per month fixed by the Tribunal as notional income of the 1st respondent is excessive. The amounts awarded by the Tribunal under other heads are highly excessive and prayed for setting aside the award passed by the Tribunal.

7. Per contra, the learned counsel appearing for the 1st respondent contended that in the accident, the 1st respondent sustained head injury-tentorial, fracture of zygomia, fracture of left maxilla, fracture of nasal bone, fracture of left iliac wing and fracture of both bones in the right leg and multiple injuries all over the body. P.W.2/Doctor examined the 1st respondent and certified that 1st respondent suffered 90% disability and issued Ex.P14/disability certificate to that effect. The Tribunal without giving any valid reason, erroneously reduced the percentage of disability from 90% to 75% and awarded compensation only for 75% disability. The Tribunal ought to have awarded compensation for 90% disability. The Tribunal considering the age and nature of injuries sustained by the 1st respondent, has awarded a sum of Rs.1,50,000/- for 75% disability at the rate of Rs.2,000/- per percentage of disability and the same is not excessive. The Tribunal considering the evidence of P.W.2/Doctor and the judgment of the Hon'ble Apex Court reported in 2011 ACJ 1, [Raj Kumar Vs. Ajay Kumar and another], fixed the loss of earning capacity of the 1st respondent at 50% and awarded compensation for loss of earning capacity by adopting multiplier method and the same is not excessive. At the time of accident, the 1st respondent was aged 44 years, doing Bottle Business under the name and style of 'Peg Bottle Manufacturer, Kovilambakkam' and was earning a sum of Rs.10,000/- per month. The 1st respondent proved the avocation and income by marking the Rental Agreement as Ex.P12. The Tribunal without considering the same, fixed a meagre sum of Rs.4,500/- per month as notional income of the 1st respondent and awarded a meagre sum of Rs.27,000/- for loss of income for six months. The Tribunal considering entire materials on record, has awarded a sum of Rs.12,75,000/- as compensation to the 1st respondent and the same is not excessive and prayed for dismissal of the appeal.

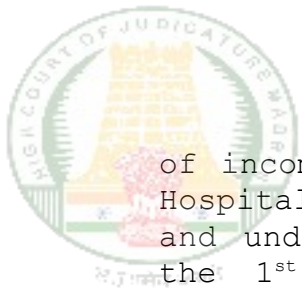
8. Heard the learned counsel appearing for the appellant-Insurance Company as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

9. From the available materials, it is seen that in the accident the 1st respondent sustained head injury-tentorial, fracture of zygomia, fracture of left maxilla, fracture of nasal bone, fracture of left iliac wing and fracture of both bones in



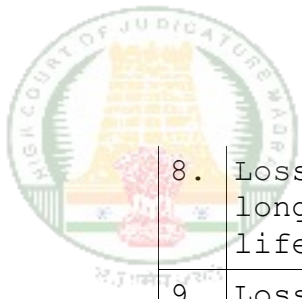
the right leg and multiple injuries all over the body. To prove the nature of injuries and disability, the 1st respondent examined himself as P.W.1 and he examined Dr.J.R.R.Thiagarajan as P.W.2. P.W.2/Doctor examined the 1st respondent and certified that 1st respondent suffered 90% disability in total and issued Ex.P14/disability certificate to that effect. The Tribunal after considering the deposition of P.W.2/Doctor and Ex.P14/disability certificate, held that the assessment of percentage of disability by P.W.2/Doctor is on the higher side and fixed the percentage of disability of the 1st respondent at 75%. The Tribunal has given valid reason for fixing the percentage of disability of the 1st respondent at 75% and the same is proper. The Tribunal considering the nature of injuries, disability and year of accident, awarded a sum of Rs.1,50,000/- (Rs.2,000/- X 75% disability) towards 75% disability at the rate of Rs.2,000/- per percentage of disability and the same is just and reasonable and hence, it is hereby confirmed. The Tribunal in addition to awarding compensation for disability by adopting percentage method, also awarded compensation for loss of earning capacity by adopting multiplier method. The 1st respondent has not proved that he suffered functional disability or lost his earning capacity. Further, from the award passed by the Tribunal, it is seen that P.W.2/Doctor has stated that the 1st respondent can continue to do his work with difficulty. P.W.2/Doctor has not stated that the 1st respondent has suffered any functional disability or lost his earning capacity. In the absence of any acceptable evidence with regard to functional disability or loss of earning capacity, the compensation awarded by the Tribunal for loss of earning capacity by adopting multiplier method is liable to be set aside and it is hereby set aside.

10.The 1st respondent in the claim petition has claimed that he was aged 44 years, doing Bottle Business under the name and style of 'Peg Bottle Manufacturer, Kovilambakkam' and was earning a sum of Rs.10,000/- per month. The 1st respondent has not proved his avocation and income by producing documentary proof like salary certificate or pay slip but, he has filed only the copy of rental agreement as Ex.P12 to prove his avocation and income. The Tribunal in the absence of any acceptable evidence with regard to avocation and income, fixed a sum of Rs.4,500/- per month as notional income of the 1st respondent and awarded a sum of Rs.27,000/- towards loss of income for six months. The accident is of the year 2011. The cost of living has increased enormously and salary of even unskilled workers has increased substantially. Hence, a sum of Rs.7,500/- per month is fixed as notional income of the 1st respondent. Thus, the 1st respondent is entitled to a sum of Rs.45,000/- (Rs.7,500/- X 6 months) for loss



of income. The 1st respondent has taken treatment in the Sooriya Hospital as inpatient from 23.05.2011 to 03.06.2011 for 12 days and underwent surgery on 27.05.2011. Considering the fact that the 1st respondent has taken treatment in the Hospital as inpatient for 12 days, the amount awarded by the Tribunal towards attendant charges is meagre and hence, the same is hereby enhanced to Rs.15,000/-. Considering the nature of injuries and disability suffered by the appellant, this Court is of the view that he would have suffered inconvenience and would be facing discomfort in his life. In view of the same, the amount of Rs.25,000/- awarded by the Tribunal for loss of amenities is meagre and hence, the same is enhanced to Rs.50,000/-. The Tribunal has awarded a sum of Rs.25,000/- for loss of longevity of life for which the 1st respondent is not entitled to. Hence, the compensation awarded by the Tribunal for loss of longevity of life is liable to be set aside and it is hereby set aside. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal towards transportation, extra nourishment, damages to clothes, pain and sufferings and medical expenses 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	7,56,000/-	-	Set aside
2.	Disability	1,50,000/-	1,50,000/-	Confirmed
3.	Pain and sufferings	40,000/-	40,000/-	Confirmed
4.	Transportation, Extra nourishment & Damages to clothes	30,000/-	30,000/-	Confirmed
5.	Medical expenses	2,20,037/-	2,20,037/-	Confirmed
6.	Loss of amenities	25,000/-	50,000/-	Enhanced
7.	Attendant charges	2,000/-	15,000/-	Enhanced



8.	Loss of longevity of life	25,000/-	-	Set aside
9.	Loss of income	27,000/-	45,000/-	Enhanced
	Total	Rs.12,75,037/- Rounded off to Rs.12,75,000/-	Rs.5,50,037/- Rounded off to Rs.5,50,000/-	Reduced by Rs.7,25,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,75,000/- is hereby reduced to Rs.5,50,000/- 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.2876 of 2011 on the file of the Motor Accidents Claims Tribunal, VI Small Causes Court, Chennai. 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 excess amount lying in the credit of M.C.O.P.No.2876 of 2011, if the award amount has already been deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (JJ Act)

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Sub Assistant Registrar

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To

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



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

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CS/24/11/2021

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