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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3063 of 2019

and

C.M.P.No.16782 of 2019

M/s. The New India Assurance Company Limited,
Motor Third Party Hub,
No.30, Jawaharlal Nehru Salai,
Pondicheri.

...Appellant / 2nd Respondent

Vs.

1.Karthick

...1st Respondent / Petitioner

2.Anandhan

...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 02.03.2019 made in M.C.O.P.No.176 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam.

For Appellant : Mr.J.Michael Visuvasam

For R1 : Mr.S.Udayakumar

For R2 : Ms.D.Roobini Chitra
for Mr.D.S.Ramesh

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 02.03.2019 made in M.C.O.P.No.176 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam.



3.The appellant is the 2nd respondent in M.C.O.P.No.176 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam. The 1st respondent filed the said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 17.02.2015.

4.According to 1st respondent, on 17.02.2015 at about 13.00 hours, while he was driving the motorcycle on Vridhachalam – Pennadam road, near Sathiyavadi Petrol bunk, the 1st respondent stopped the motorcycle on the extreme left side of the road. At that time the 2nd respondent-driver cum owner of the Tata Ace bearing Registration No.TN 31 AV 7137 drove the same with high speed and dashed against the motorcycle, which was parked by the 1st respondent on the extreme left side of the road and caused the accident. In the accident, the 1st respondent sustained multiple grievous injuries all over his body. Therefore, he filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him against the 2nd respondent and appellant-Insurance Company, being the driver cum owner and insurer of the Tata Ace respectively.

5.The 2nd respondent-driver cum owner of the Tata Ace filed counter statement and denied all the averments made by the 1st respondent. The 2nd respondent denied the manner of accident as alleged by 1st respondent. According to 2nd respondent, the 1st respondent, who was under the influence of alcohol drove the motorcycle in a rash and negligent manner and dashed against the Tata Ace and invited the accident. Karuveppilankurichi Police also registered a case against the 2nd respondent in Crime No.42 of 2015 and after investigation, closed the case as mistake of fact on the ground that the accident has occurred only due to negligence on the part of the 1st respondent, who under the influence of alcohol drove the motorcycle in a rash and negligent manner and dashed against the Tata Ace and invited the accident. Hence, the 2nd respondent is not liable to pay any compensation to the 1st respondent. The 2nd respondent has insured the Tata Ace with the appellant-Insurance Company and only the appellant is liable to pay the compensation to the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is exorbitant and prayed for dismissal of the claim petition as against 2nd respondent.



6.The appellant-Insurance Company, being the insurer of the Tata Ace filed separate counter statement and denied the averments made by the 1st respondent in the claim petition. The appellant denied the manner of accident as alleged by the 1st respondent. According to appellant, the 1st respondent who was riding the motorcycle, failed to control the motorcycle and left free to move on its own motion and proceeded on the west side and dashed on the Tata Ace owned by 2nd respondent and invited the accident. The charge sheet also reveals that the accident has occurred only due to rash and negligent driving by the 1st respondent who drove the motorcycle at an uncontrollable speed. The 1st respondent has given a false complaint only with a view to claim money from the appellant-Insurance Company. Further, the case registered against the 2nd respondent in Crime No.42 of 2015 by the Karuveppilankurichi Police was closed as 'mistake of fact'. The 2nd respondent did not possess badge endorsement in his license at the time of accident and committed breach of policy conditions. The 2nd respondent's badge endorsement in the license was expired at the time of accident. The F.I.R. in Crime No.42 of 2015 lodged by Karuveppilankurichi Police Station was not in consonance and conformity with the allegations of the 1st respondent. The appellant denied the age, avocation, income, nature of injuries and treatment taken by the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent was examined as P.W.1 and 16 documents were marked as Exs.P1 to P16. The 2nd respondent and appellant-Insurance Company did not let in any oral and documentary evidence. The disability certificate issued by the Medical Board, Government Headquarters Hospital, Cuddalore was marked as Ex.C1.

8.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the driver of the Tata Ace belonging to 2nd respondent and directed the appellant to pay a sum of Rs.8,88,200/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent-owner of the Tata Ace.



9.To set aside the said award dated 02.03.2019 made in M.C.O.P.No.176 of 2015, the appellant has come out with the present appeal.

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10.The learned counsel appearing for the appellant contended that the accident occurred only due to rash and negligent driving by the 1st respondent. The 1st respondent drove the new unregistered motorcycle without knowing how to drive, dashed against the Tata Ace owned by 2nd respondent and caused the accident. The 1st respondent did not possess driving license at the time of accident. The Tribunal without properly appreciating the charge sheet and final report, closed the criminal case as 'mistake of fact' and erroneously fastened the liability on the part of the appellant. The 1st respondent has not filed any document to show that he suffered functional disability. The 1st respondent was aged 21 years at the time of accident and he has not filed any document to prove his avocation and income. The Tribunal without properly appreciating the evidence and in the absence of material evidence, erroneously adopted multiplier method and awarded compensation for loss of earning capacity. In addition to the amount awarded by the Tribunal towards loss of earning capacity, the Tribunal has separately awarded a sum of Rs.90,000/- towards disability and the same is liable to be set aside. The total compensation awarded by the Tribunal under other heads are highly excessive and prayed for setting aside the award passed by the Tribunal.

11.Per contra, the learned counsel appearing for the 1st respondent contended that the accident has occurred only due to rash and negligent driving by the driver of the Tata Ace. The 1st respondent examined himself as P.W.1 and proved the same. The appellant and 2nd respondent did not let in any contra evidence. The Tribunal in the absence of any contra evidence, rightly held that accident has occurred only due to rash and negligent driving by the 2nd respondent. The Tribunal considering the nature of injuries, disability and period of treatment taken, awarded compensation under different heads by adopting multiplier method for awarding compensation for loss of earning capacity, which are not excessive warranting interference and prayed for dismissal of the appeal.

12.Ms.D.Roobini Chitra, representing Mr.D.S.Ramesh, learned counsel appearing for 2nd respondent contended that the



accident has occurred only due to negligence on the part of the 1st respondent and the Tribunal erroneously held that the accident has occurred only due to negligence on the part of the 2nd respondent. The F.I.R. registered against the 2nd respondent was closed as mistake of fact and the Tribunal ought to have fixed entire negligence on the part of the 1st respondent. The Tribunal rightly directed the appellant to pay the compensation at the first instance and erroneously directed the appellant to recover the same from the 2nd respondent. The compensation awarded by the Tribunal under different heads are highly excessive and prayed for dismissal of appeal.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

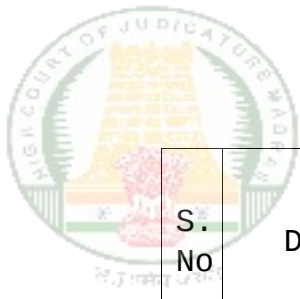
14. It is the case of the 1st respondent that while he stopped his motorcycle near Petrol Bunk, the 2nd respondent-driver cum owner of the Tata Ace drove the same in a rash and negligent manner and dashed on the motorcycle and caused the accident. In the accident, the 1st respondent suffered injuries and filed the claim petition claiming compensation for the injuries sustained by him. To substantiate this case, the 1st respondent examined himself as P.W.1 and deposed to that effect and marked F.I.R., which was registered against the driver of the Tata Ace. On the other hand, it is the case of the appellant that accident has occurred only due to the negligence of the 1st respondent and 1st respondent did not possess driving license at the time of accident and without knowing how to drive the motorcycle, he dashed against the Tata Ace and caused the accident. To substantiate their case, the appellant has not examined the driver of the Tata Ace, the 2nd respondent herein or any eyewitness to prove their case. The appellant relied on final report, which was closed as mistake of fact to prove their negligence on the part of the 1st respondent. The 2nd respondent filed counter statement but did not let in any evidence to substantiate his case. The Tribunal considering the materials placed before it, evidence of P.W.1 and in the absence of any contra evidence, held that accident has occurred only due to rash and negligent driving by the driver of the Tata Ace owned by 2nd respondent. There is no error in the said finding of the Tribunal.



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15.As far as quantum of compensation is concerned, it is the case of the 1st respondent that he was aged 21 years working as Technician (Placing Work) in Vodafone and was earning a sum of Rs.12,000/- per month. In the accident, he sustained grievous injuries. He was referred to Medical Board attached to the Government Head Quarters Hospital, Cuddalore. The Medical Board examined the 1st respondent and certified that he suffered 30% permanent disability. The 1st respondent has not let in any evidence to show that he suffered functional disability or lost his earning capacity. The Tribunal without giving any reason erroneously adopted multiplier method for awarding compensation for loss of earning capacity. In the absence of any evidence to prove that the 1st respondent has suffered functional disability and lost his earning capacity, he is not entitled to any compensation for loss of earning capacity by adopting multiplier method. In view of the above, the compensation awarded by the Tribunal towards loss of earning power is liable to be set aside and it is hereby set aside. The Tribunal in addition to the amount granted for loss of earning capacity, separately granted compensation for 30% disability at the rate of Rs.3,000/- per percentage of disability. The accident occurred in the year 2015 and a sum of Rs.3,000/- per percentage of disability awarded by the Tribunal is meagre. 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 2015. 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.1,20,000/- (Rs.4,000/- X 30% disability). 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	5,83,200/-	-	Set aside



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
2.	Disability	90,000/-	1,20,000/-	Enhanced
3.	Loss of income	54,000/-	54,000/-	Confirmed
4.	Pain and sufferings	75,000/-	75,000/-	Confirmed
5.	Loss of discomfort	50,000/-	50,000/-	Confirmed
6.	Transportation	15,000/-	15,000/-	Confirmed
7.	Extra nourishment	15,000/-	15,000/-	Confirmed
8.	Attendant charges	6,000/-	6,000/-	Confirmed
	Total	Rs.8,88,200/-	Rs.3,35,000/-	Reduced by Rs.5,53,200/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,88,200/- is hereby reduced to Rs.3,35,000/- 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.176 of 2015 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Vridhachalam, at the first instance and recover the same from the 2nd respondent. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount, if any already withdrawn, by filing 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.176 of 2015, if the



award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

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To

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

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

+1cc to Mr.J.Michael Visuvasam, Advocate SR.No.16279

+1cc to Mr.S.Udhayakumar, Advocate SR.No.16077

C.M.A.No.3063 of 2019

RLD(CO)
RVM(20/10/2021)