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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A. No. 4038 of 2019
and
C.M.P.No.22812 of 2019

Tata AIG General Insurance Company Limited,
Rep. by its Branch Manager, GSN Arcade,
1st Floor, Beside Vemala Kalyana Mandapam,
Krishnagiri Bypass Road, Hosur Town. ..Appellant/Respondent-2

Vs.

1. N.Mallesha ...Respondent/Petitioner/Respondent-1
2. Ragavendra

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 05.02.2019, made in M.C.O.P. No. 96 of 2016, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur.

For Appellant : Mr. K. Vinod

For R1 : Mr.K.Prassana
for Mr.Mukund R.Pandiyan

For R2 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 05.02.2019, made in M.C.O.P.No. 96 of 2016, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur.

2.The 1st respondent is the claimant in M.C.O.P.No. 96 of 2016, on the file of the Additional District Court, (Motor Accident Claims Tribunal), Hosur. He 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 08.11.2015.



3. According to the 1st respondent, on the date of accident, he was standing near Duro Flex Company gate, Kalukondpalli in Thalli-Hosur Road. While he was standing in the edge of the road, the rider of the motorcycle bearing Registration No. TN 70 K 9363 belonging to the 2nd respondent drove the vehicle in a rash and negligent manner and dashed against the 1st respondent and caused accident. Due to the accident, the 1st respondent sustained grievous injuries. Hence, the 1st respondent has filed the claim petition seeking compensation.

4. The 2nd respondent/owner of the vehicle remained ex parte before the Tribunal.

5. The appellant/Insurance Company has filed a counter statement and denied involvement of the alleged Motorcycle in the accident. According to the appellant, the manner of accident narrated in the FIR and the petition is false. The 2nd respondent, rider of the motorcycle was not possessing valid and effective driving license at the time of accident. For the breach and violation of the terms and conditions of the insurance policy, the appellant/Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, one Rangasamy was examined as P.W.2 and marked 5 documents as Exs.P1 to P15. The appellant examined one witness as R.W.1 and marked 3 documents as Exs.R1 to R3.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent riding by the the rider of the motorcycle belonging to the 2nd respondent and directed the appellant/Insurance Company as insurer of the vehicle to pay a sum of Rs.11,48,227/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent.

8. Against the said award dated 05.02.2019, made in M.C.O.P.No.96 of 2016, granting compensation to the 1st respondent/claimant, the appellant/Insurance Company has come out with the present appeal.

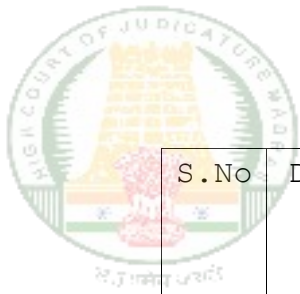
9. Heard learned counsel appearing for the appellant as well as the 1st respondent and perused the materials available on record.

10. The contention of the learned counsel appearing for the appellant is that the Tribunal erred in applying multiplier method for awarding compensation towards loss of earning



capacity for the nature of injuries sustained by the 1st respondent and the 1st respondent is not entitled to compensation by applying multiplier method. The said contention has considerable force. A perusal of the award of the Tribunal shows that District Medical Board, Krishnagiri assessed the disability of the 1st respondent at 35% disability and issued Ex.P15/disability certificate to that effect. For the said reason, the Tribunal applied multiplier method and granted compensation. The 1st respondent has not proved that he suffered functional disability or lost his earning capacity. In the absence of any evidence with regard to functional disability or loss of earning capacity, the reasoning of the Tribunal for applying multiplier method for granting compensation towards disability and loss of earning power is erroneous. Considering Ex.P15/disability certificate, as extracted in the award, the first respondent is entitled to compensation for 35% of disability only by adopting percentage method. By awarding Rs.3,500/- per percentage of disability, a sum of Rs.1,22,500/- (3,500 X 35) is arrived as compensation towards disability.

11. As far as monthly income of the 1st respondent is concerned, the 1st respondent was aged 29 years, at the time of the accident. He was an agriculturist and also doing tomato business and also working as a supervisor under private firm and was earning a sum of Rs.30,000/- per month. To prove the said contention, the 1st respondent has filed Ex.P8/salary certificate. The Tribunal rejected the same on the ground that the salary certificate not contain the deductions and also not marked through the proper labour contractor. In the absence of any material evidence with regard to avocation and income of the 1st respondent, the Tribunal fixed a sum of Rs.12,000/- as monthly income of the 1st respondent. The accident is of the year 2015 and the monthly income fixed by the Tribunal is meager. Hence a sum of Rs.15,000/- is fixed as monthly income of the 1st respondent. Considering the nature of injuries sustained by the 1st respondent, he would not have attended his work atleast for three months. Therefore, a sum of Rs.45,000/- (Rs.15,000/- x 3) is awarded towards loss of income for three months. The amounts awarded by the Tribunal towards attender charges and pain & sufferings are meager and hence, the same are hereby enhanced to Rs.25,000/- and Rs.50,000/- respectively. The amounts awarded by the Tribunal under different heads are just and reasonable and hence the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning capacity	8,56,800	1,22,500	Reduced
2.	Transportation charges	15,000	15,000	Confirmed
3.	Nutrition charges	25,000	25,000	Confirmed
4.	Attender charges	10,000	25,000	Enhanced
5.	Pain and sufferings	25,000	50,000	Enhanced
6.	Discomfort, frustration and loss of social enjoyment	30,000	30,000	Confirmed
7.	Medical Bills	1,66,427	1,66,427	Confirmed
8.	Future Medical expenses	20,000	20,000	Confirmed
	Total	Rs.11,48,227/-	Rs.4,98,927/- rounded off to Rs.5,00,000/-	Reduced to Rs.6,48,227/-

12. In the result, the appeal is partly allowed and the compensation awarded by the Tribunal at Rs.11,48,227/- is hereby reduced to Rs.5,00,000/- 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 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 order. On such deposit, the claimant/first respondent is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of



M.C.O.P.No.96 of 2016, if the entire award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mtl

To

1.The Additional District Judge,
Motor Accident Claims Tribunal,
Hosur.

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

+1 CC to Mr.K.Vinod, Advocate sr 29502.

+1 CC to Mr. Mukund R. Pandian, Advocate sr 29489.

C.M.A.No. 4038 of 2019

AK(CO)
SP(02/11/2021)