



WEB COPY

C.M.A.No.315 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.315 of 2021
and C.M.P.No.2173 of 2021

M/s.United India Insurance Co.Ltd.,
No.178, Dr.Nanjappa Road,
Opp. Chidambaram Park,
Coimbatore – 641 018.

...Petitioner

Vs.

1.M.D.Fazal

2.P.Soundararaj

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 18.09.2019 in M.C.O.P.No.1307 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.S.Hameed Ismail

For R2 : Notice Served



JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN.J.)

The appellant had preferred the above appeal challenging the finding on negligence and quantum of compensation awarded to the first respondent herein by the Special Subordinate Judge in M.C.O.P.No.1307 of 2015 dated 18.09.2019.

2.The first respondent herein filed a claim petition stating that on 28.02.2015 at 8.30 p.m when he was riding his motorcycle bearing Reg.No.TN 57 AC 0450 on the Vathalakundu to Sempatty main road, at Kulampatti pirivu from South to North, a Hero Honda Splendor bearing Registration No.TN 57 S 5312 came in the opposite direction in a rash and negligent manner and dashed against the motorcycle driven by the 1st respondent. The second respondent herein was the rider of the said offending motorcycle. Due to the accident, the first respondent suffered severe injuries all over the body especially in the left knee and in the foot. The first respondent was then treated as in patient from 28.02.2015 to 04.03.2015 at City Hospital, Dindugal. Hence, the first respondent claimed a compensation of Rs.2,81,00,000/- (Rupees Two Crore Eighty One lakhs) against the second respondent and appellant as owner and insurer of the offending vehicle.



3.The second respondent herein who is the owner and rider of the offending two wheeler remained ex-parte before the Tribunal.

4.The appellant filed a counter statement stating that the nature of averments made in the claim petition indicates that the two motorcycles were involved in the accident and it is a head on collision and therefore, the first respondent is also liable for contributory negligence. The first respondent did not produce the driving license. The appellant filed an additional counter statement stating that the first respondent must subject himself to examination by the medical board for assessing permanent disability. The first respondent availed medical treatment in Railway Hospital, and he had not incurred any expenses towards the medical treatment. The compensation claimed by the first respondent is highly excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the first respondent examined himself as P.W.1 and marked Exs.P.1 to P.16. The appellant did not examine any witnesses or mark any document on their side.

6.The Tribunal on considerations of the pleadings, evidence and document on record held that the appellant is liable to pay compensation as it



found that the rider of the offending two-wheeler namely the second respondent herein is guilty of negligence. The Tribunal held that the first respondent herein is entitled to a compensation of Rs.1,16,30,847/- and directed the appellant to pay the compensation to the first respondent.

7. Aggrieved the said award and decree dated 18.09.2019 made in M.C.O.P.No.1307 of 2015, the appellant/insurance company has filed the present appeal.

8. The learned counsel for the appellant though had challenged the finding of the Tribunal on negligence was not able to establish or substantiate the claim of the appellant as regards negligence. Therefore, we are of the view that the Tribunal is justified in holding that the second respondent herein is liable for negligence and the Appellant as the Insurer is liable to pay compensation. As far as quantum of compensation is concerned, the learned counsel for the appellant submitted that the first respondent had not adduced any evidence to establish the loss of earning power. The Tribunal on the basis of surmises and conjunction had fixed the average loss of income at Rs.40,000/- per month and had adopted the multiplier method to award compensation under the head “future loss of earning power”. This conclusion



of the Tribunal is contrary to the evidence on record. The documents produced by the first respondent, Ex.P.12 shows that the 1st respondent was given an alternative appointment in the same level. However, in the list of documents enumerated in the Judgment, the Tribunal had called it as “De-promoted Certificate”. There is nothing in Ex.P.12 to suggest that it was certificate indicating De-promotion. The learned counsel further submitted that the 1st respondent had admitted in his evidence at the time of examination i.e., in the year 2019, he was drawing a salary of Rs.57,000/- and at the time of accident he was drawing a salary of Rs.43,000/-. The Tribunal therefore had committed a serious error in adopting the multiplier method and holding that he had suffered loss of earning capacity without any basis. In any event, the Tribunal having adopted the multiplier method ought not to have awarded compensation towards loss of amenities. This approach of the Tribunal is contrary to the Judgment of the Hon’ble Apex Court in ***Raj Kumar Vs. Ajay Kumar*** reported in **(2011) 1 SCC 343**. The Tribunal had also awarded excess compensation under the head Pain and Suffering at Rs.25,00,000/- and Attender Chargers at Rs.10,00,000/- which is highly exorbitant and prayed for setting aside the award of the Tribunal.



9.The learned counsel for the first respondent submitted that the award by the Tribunal is well justified. The first respondent had established that he had lost his promotional prospects in view of the change in the job assigned to him. He had established that had he continued in the same job, he would have earned more income. The Tribunal therefore had taken into consideration all the above aspects and awarded just compensation and there is no reason to set aside the finding of the Tribunal and prayed for dismissal of the appeal.

10.Heard the learned counsels on either side and perused the pleadings, documents and evidence on record.

11.At the outset, we must record that the approach of the Tribunal is shocking to say the least. The Act is a beneficial legislation and provides for awarding just compensation. The Hon'ble Supreme Court and this Court had repeatedly held that Courts must bear in mind that the Act is a beneficial legislation and be liberal in awarding just compensation in genuine cases. However in this Case, the Tribunal had adopted an ingenious method to award compensation which is exorbitant and highly disproportionate to the injury suffered by the first respondent.



12.The Tribunal without rendering a finding as to whether the first respondent suffered functional disability has adopted the multiplier method. This is erroneous in the first place. The Tribunal without considering the evidence on record assumed that there would have been loss of income. Thereafter, the Tribunal fixed the loss of income as Rs.40,000/- per month and adopted the multiplier method to hold that the first respondent is entitled to a compensation of Rs.70,56,000/- under the head Future Loss of Earning Power. The Tribunal without any basis held that the alternative employment given to the 1st respondent is a degraded post and has affected his further promotions and income. The Tribunal relied upon Ex.P.12 marked on behalf of first respondent to arrive at such a conclusion. A reading of Ex.P.12 would show that the employment that was offered to the 1st respondent reads as follows:

“The under mentioned employee who has been recommended for alternative employment on medical grounds is ordered absorption in the ministerial cadre of Personnel Department in the same level”

This would clearly indicate that the first respondent was given alternative job in the same level. Further Ex.P.12 does not say that it was “ De-promoted Certificate”. We do not know as to how the Tribunal had called it as a “ De-promoted Certificate”. Above all, in the year 2019 the first respondent in



his evidence had admitted that he was drawing a salary of Rs.57,000/- and he had drawn a salary of Rs.43,000/- at the time of accident in the year 2015. On his admission, his own income has increased by Rs.14,000/- in four years. In such circumstances, the Tribunal by ignoring the evidence both oral and documentary has rendered a perverse finding that the 1st respondent had suffered loss of income. Apart from that, there is no other evidence adduced by the 1st respondent to show that on account of the accident, there was loss of income even for a short duration. Therefore, we set aside the compensation awarded under the head future loss of earning power. However the first respondent is entitled to compensation towards disability by adopting percentage method. As per Ex.P.16, disability certificate issued by the District Disabled Persons Officer, Madurai, the first respondent has suffered 70% disability. Accordingly, a sum of Rs.2,80,000/- is awarded towards disability by granting Rs.4000/- per percentage of disability.

13.We also find that the compensation under the head loss of amenities is fixed at Rs.10,00,000/-. This being exorbitant, there is absolutely no discussion by the Tribunal as to how it had concluded that Rs.10,00,000/- has to be awarded under the said head. The award under the head Pain and Suffering at Rs.25,00,000/- is also exorbitant considering the nature of injuries



suffered by the 1st respondent. Ex.P.16 relied upon by the first respondent does not suggest that the first respondent suffered functional disability. In Ex.P.12 the Railway Authorities had made the following observations:

“Sri.Mr. Md Fazal, SSE/C&W/MDU has been examined by Sr.DMO/Ortho/RH/MDU. The above named is a case of floating knee left lower limb with arthrodesis of left knee. As he can not bend knee due to arthrodesis of knee joint with fracture in Supracondylar region of femur, he cannot claim upstairs. Hence, the above employee may be provided with office work in ground floor.”

This only shows that he could not claim stairs. Thus the compensation awarded under the head of Pain and Suffering and Loss of Amenities is disproportionate and exorbitant. Therefore, the compensation awarded under the said heads are modified. The compensation awarded towards Loss of Amenities is reduced to Rs.50,000/-. The compensation under the head Pain and Suffering is reduced to Rs.1,00,000/-. The amount awarded by the Tribunal towards Attender Charges at Rs.10,00,000/- is exorbitant. There is no evidence adduced by the first respondent to suggest that he needed an attender continuously. There is no discussion in the award and it is without any basis. The compensation under the said head is modified to Rs.5,00,000/-. However, we are of the view that the compensation under the head Transportation to Hospital can be enhanced from 10,000/- to Rs.20,000/- and for extra



nourishment for Rs.10,000/- to Rs.50,000/- as the amounts awarded by the Tribunal are meagre. Considering the nature of injuries suffered by the first respondent, the compensation awarded by the Tribunal under all other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or reduced or granted
1	Future loss of earning power	70,56,000/-	---	Set aside
2.	Disability for 70%	---	2,80,000/-	Granted
3.	Medical Bills	49,847	49,847/-	Confirmed
4.	Loss of Amenities	10,00,000/-	50,000/-	Reduced
5.	Pain and Suffering	25,00,000/-	1,00,000/-	Reduced
6.	Attender Chargers	10,00,000/-	5,00,000/-	Reduced
7.	Transportation to Hospital	10,000/-	20,000/-	Enhanced
8.	Extra Nourishment	10,000/-	50,000/-	Enhanced
9.	Damage to Clothing	5,000/-	5,000/-	Confirmed
Total		1,16,30,847/-	10,54,847/-	Reduced by Rs.1,05,76,000/-

15. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.1,16,30,847/- awarded by the Tribunal is hereby reduced to Rs.10,54,847/- 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 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. 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. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.1307 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Coimbatore if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V.,J)

(S.M.,J)

24.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

dk

To

1. Special Subordinate Judge,
Motor Accidents Claims Tribunal
Coimbatore.

2.The Section Officer
VR Section



High Court of Madras
Chennai – 600 104

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V.M.VELUMANI,J.
and
SUNDER MOHAN,J.
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