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C.M.A.No.3486 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3486 of 2008

and

M.P.Nos.1 + 1 of 2008 and 2010

United India Insurance Co.Ltd.,
Branch Office-IV, 1940-B, Trichy Road,
Ramanathapuram, Coimbatore.

... Appellant/ 2nd Respondent

Vs.

1. Ponnusamy

2. Suseela

...2nd Respondent/1st Respondent

(Set *ex-parte* by the Claims Tribunal)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to set aside the decree and judgment dated 03.10.2007 made in MACTOP No.847 of 2004 on the file of the Motor Accident Claims Tribunal, Tiruppur passed by the Additional District Judge / Motor Vehicle Accident Claims Tribunal Judge (Fast Track Court No.4, Coimbatore at Tiruppur).

For Appellant : M/s.M.J.Vijayaraghavan

For Respondents : Mr.Ma.Pa.Thangavel [R1]

Ex-parte [R2]



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JUDGEMENT

The Civil Miscellaneous Appeal has been filed to set aside the decree and judgement dated 03.10.2007 made in MACTOP No.847 of 2004 on the file of Motor Accident Claims Tribunal, Tiruppur passed by the Additional District Judge / Motor Vehicle Accident Claims Tribunal Judge (Fast Track Court No.4, Coimbatore at Tiruppur).

2. It is the case of the appellant that on 03.07.2004 at about 11.00 am, when the first respondent was travelling as a pillion rider in a two wheeler bearing registration No.TN 30 M 1985, a lorry bearing registration No.TN 07 27 V 1585 came in a rash and negligent manner and dashed against the first respondent, causing grievous injuries. Thereby, the first respondent filed a claim petition before the Tribunal claiming compensation of Rs.5,00,000/- as against the owner and the insurance company. However, the Tribunal vide order dated 03.10.2007 awarded a sum of Rs.4,50,700/-. Aggrieved by the quantum awarded by the Tribunal, the present appeal has been filed.

3. Before the Tribunal, the claimant examined himself as P.W.1 and



examined the Doctor as P.W.2 and marked 7 documents viz., Ex.A.1 to Ex.A.7.

No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.4,50,700/- as compensation under various heads. Aggrieved by the same, the present appeal has been filed by the appellant/ Insurance Company.

4. The learned counsel for the appellant/Insurance Company submits that though the Doctor, P.W.2 has assessed the percentage of disability at 60%, however, the tribunal upon taking into account the nature of injury sustained by the first respondent has rightly fixed the disability of the first respondent at 50% as per the evidence produced by P.W.2. He further submits that the accident happened in the year 2004, at that point of time the trial Courts awarded only Rs.2000/- or Rs.3000/- for pain and suffering, however, the Tribunal has awarded Rs.25,000/- for the said head which is highly excessive. He further submits that though at the time of accident, the first respondent was 43 years old and the correct multiplier would come to 14, the Tribunal by wrongly adopting the multiplier as 15 has granted compensation under the head “Loss of earning power” which is wholly unsustainable. Accordingly, he



prayed to allow this appeal.

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5. The learned counsel appearing for the first respondent/claimant submits that admittedly the Doctor who has given treatment to the first respondent was examined as P.W.2 and upon examining the first respondent, he has issued the disability certificate which is marked as Ex.A.6 assessing the disability of the first respondent at 60% and in order to substantiate the same the claimant also proved his case by producing X-ray, which is marked as Ex.A.7. However, the Tribunal fixing the multiplier at 15 and upon considering the nature of the injuries sustained by the first respondent has assessed the disability at 50% and awarded the compensation to the tune of Rs.4,50,700/- which cannot be said be excessive and the same does not require any interference. Accordingly, he prayed to dismissal of this appeal.

6. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials placed on record.

7. The factum and manner of the accident is not disputed by the



parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/Insurance Company is with regard to the quantum of compensation awarded. A perusal of the impugned award reveals that the Tribunal has wrongly adopted the multiplier as 15 and fixed the compensation as Rs.2,70,000/- under the head Loss of earning power which requires interference. As per the decision of the Hon'ble Supreme Court in case of **Sarla Verma and Ors. v. DTC & Ors.** reported in (2009) 6 SCC 121, the correct multiplier to be adopted between the age group of 41-45 years would be 14. In the present case, the first respondent being within the age group of 41-45 years, the appropriate multiplier is 14. Therefore, the loss of earning power is arrived at $\text{Rs.}3000/- * 12 * 14 * 50\% = \text{Rs.}2,52,000/-$. Further the compensation awarded by the Tribunal under the other heads are just and reasonable and the same does not require any interference.

8. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of earning	2,70,000/-	2,52,000/-



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
			(reduced)
2	Medical Bills	1,38,700/-	1,38,700/-
3	Pain and Sufferings	25,000/-	25,000/-
4	Extra nourishment	5,000/-	5,000/-
5	Transport expenses	2,000/-	2,000/-
6	Loss of income from the date of accident till the date of claim petition	10,000/-	10,000/-
	Total	4,50,700/-	4,32,700/-

9. Accordingly, the appeal is partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.4,50,700/-** to **Rs.4,32,700/-**. The appellant/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.847 of 2004 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter.



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There shall be no order as to costs in the present appeal. Consequently,

connected miscellaneous petitions are closed.

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Speaking Order : Yes/No

Index : Yes/No

NCC : Yes/No

To

1. Motor Vehicle Accident Claims Tribunal, Fast Track Court No.4, Coimbatore at Tiruppur
- 2.The Section Officer, V.R. Section, High Court, Madras.



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