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C.M.A.Nos.1313 and 1314 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.Nos.1313 and 1314 of 2016
and C.M.P.Nos.10058 and 10059 of 2016

The Oriental Insurance Co.Ltd.,
India Life Buildings,
Trichy Road,Coimbatore.

...Appellant in both appeals

Vs.

1. Gopal
2. Balasubramaniam

...Respondents in C.M.A.No.1313 of 2016

1. G.Manikandan
2. Balasubramaniam
2016

...Respondents in C.M.A.No.1314 of

Common Prayer: The Civil Miscellaneous Appeal filed u/s.173 of Motor Vehicles Act, 1988, against the award and decree dated 03.08.2015 made in M.C.O.P.No.121 and 125 of 2013 on the file of the Motor Accidents Claims Tribunal, I Additional District Judge, Tirupur.

In both Appeals

For Appellants : Mr.S.Arun Kumar

For Respondents : Mr.K.Myilsamy [R1]

No Appearance [R2]



C.M.A.Nos.1313 and 1314 of 2016

COMMON JUDGMENT

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2. It is the case of the claimants that on 16.01.2013 at about 13.30 hours when the claimant in M.C.O.P.Nos.121 of 2013 and the claimant in M.C.O.P.No.125 of 2013 were proceeding in a two wheeler as pillion rider and driver in a vehicle bearing registration No.TN 39 BB 3342, at that time an innova car bearing registratin No.TN 37 BU 3345 driven by the first respondent in a rash and negligent manner dashed the vehicle in which the claimants were travelling, due to which, the claimants sustained grievous injuries and were hospitalized as in patients and thereafter admitted for higher medical procedures for the injuries sustained, the claimants have filed the respective claim petitions claiming compensation.

3. Before the Tribunal, the claimants examined P.W.1 to P.W.4 and marked Exs.P.1 to Ex.P.10. Neither any documents nor any witnesses were



examined on behalf of the respondents. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.83,000/- as compensation under various heads in M.C.O.P.No.121 of 2013 and a sum of Rs.5,76,400/- as compensation in M.C.O.P.No.125 of 2013 in favour of the claimants in respective claim petitions. Aggrieved by the same, the present appeals have been filed by the appellant/ Insurance Company.

4. The learned counsel appearing for the appellant/insurance company submitted that though the pillion rider sustained only lacerated injuries, the Tribunal awarded a sum of Rs.50,000/- under the head pain and suffering which is *per se* unsustainable. However, in respect of the rider of the motor cycle, though the Doctor assessed 29.40% partial permanent disability, however, the Tribunal fixed 18% towards functional disability by adopting multiplier method which is *per se* unsustainable. In the absence of any proof that the rider of the motor cycle could not continue his avocation as before the said accident, the Tribunal erred in fixing 18% of functional disability by adopting multiplier method which requires to be modified.



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5. The learned counsel appearing for the first respondents in respective appeals / claimants submits that upon perusing all the oral and documentary evidence, the Tribunal has rightly directed the appellant/insurance company to pay a sum of Rs.83,000/- and Rs.5,76,400/- to the first respondent in respective appeals / claimants does not require interference of this Court. Accordingly, he prays for dismissal of the appeals.

6. Though notice was served on second respondent in respective appeals, none appeared on his behalf. Considering the pendency of these appeals this Court is inclined to dispose of the same based on the materials available on record.

7. Heard the learned counsel for the appellant in respective appeals and the learned counsel appearing for the first respondent in respective appeals and perused the materials placed on record.



8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The main ground of attack in respect of the rider of the motor cycle is that though the rider sustained partial permanent disability, however, the Tribunal fixed 18% towards functional disability by adopting multiplier method without any proof for non employment due to the said accident. Hence, it would be appropriate, if this Court modifies the award passed in M.C.O.P.No.125 of 2013 by adopting percentage method instead of multiplier method. The other ground of attack in respect of the pillion rider of the motor cycle is that the Tribunal erred in awarding a sum of Rs.50,000/- towards pain and suffering, though he sustained only lacerated injuries.

9. Insofar as the appeal in C.M.A.No.1313 of 2016, this Court is of the view that the compensation awarded under the head pain and suffering is highly excessive in M.C.O.P.No.121 of 2013 as the pillion rider of the motor cycle only sustained lacerated injuries. Hence, the award granted under the head pain and suffering is modified from a sum of Rs.50,000/- to Rs.25,000/-. The other heads awarded by the Tribunal are



C.M.A.Nos.1313 and 1314 of 2016

just and reasonable. Accordingly, the appeal filed by the appellant in

C.M.A.No.1313 of 2016 is partly allowed and the award passed by the Tribunal in M.C.O.P.No.121 of 2013 is reduced from Rs.83,018/- to Rs.58,018/-. The appellant/Insurance Company in C.M.A.No.1313 of 2016 is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.121 of 2013 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 weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent in C.M.A.No.1313 of 2016/claimant in M.C.O.P.No.121 of 2013 through RTGS within a period of two weeks thereafter.

10. As regards, C.M.A.No.1314 of 2016 is concerned, 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/insurer of the car is with regard to the multiplier method fixed by the Tribunal



though the appellant sustained only partial disability. In the absence of any proof that the appellant could not continue his avocation, the adoption of multiplier method would not be appropriate. Therefore, adoption of percentage method would be just and reasonable. As the accident is of the year 2013, this Court fixes a sum of Rs.4,000/- per percentage of disability. Though the Doctor assessed the disability at 29.40%, however, the Tribunal fixed only 18% which is per se unsustainable. Since the percentage of disability varies from Doctor to Doctor, this Court is inclined to fix the percentage of disability of the claimant in M.C.O.P.No.125 of 2013 at 25%. Therefore, the amount under the head "Loss of earning power" stands modified to a sum of Rs.1,00,000/- ($25\% \times \text{Rs.4,000/-} = \text{Rs.1,00,000/-}$). The Tribunal has awarded a sum of Rs.50,000/- towards the head "pain and suffering", which is highly excessive and the same is reduced to a sum of Rs.25,000/- towards the said head. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

11. In view of the above, the compensation awarded by the Tribunal



C.M.A.Nos.1313 and 1314 of 2016

in M.C.O.P.No.125 of 2013 is modified as under :-

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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>
1	Loss of earning power	4,66,560/-	1,00,000/- (reduced)
2	Pain and Suffering	50,000/-	25,000/- (reduced)
3	Medical Expenses as per bill	29,833/-	29,833/-
4	Attender charges	10,000/-	10,000/-
5	Tranport expenses	10,000/-	10,000/-
6	Nutrition	10,000/-	10,000/-
	Total	5,76,393/-	1,84,833/-

12. Accordingly, the appeal in C.M.A.No.1314 of 2016 is partly allowed and the compensation amount is reduced from Rs.5,76,393/- to Rs.1,84,833/- and the appellant/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.125 of 2013 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 weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount



C.M.A.Nos.1313 and 1314 of 2016

directly to the bank account of the first respondent in C.M.A.No.1314 of 2016/claimant in M.C.O.P.No.125 of 2013 through RTGS within a period of two weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.10.2023

Speaking Order / Non Speaking Order : Yes/No
Index : Yes/No
NCC : Yes/No

To

1. Motor Accidents Claims Tribunal, I Additional District Judge, Tirupur.
 2. The Registrar, City Civil Court, Chennai.
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C.M.A.Nos.1313 and 1314 of 2016

M.DHANDAPANI,J

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C.M.A.Nos.1313 and 1314 of 2016

30.10.2023