



Civil Miscellaneous Appeal No.1430 of 2021
and Cross Objection No.80 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

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THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

Civil Miscellaneous Appeal No.1430 of 2021
& C.M.P.No.7445 of 2021 &
Cross Objection No.80 of 2021

The Branch Manager,
Reliance General Insurance Co. Ltd.,
Branch Office, Shree Lakshmi Complex,
1st Floor, Omalur Main Road,
Bharathi Street, Swarnapuri,
Salem - 636 004.

... Petitioner

Vs.

1.Sivakumar
S/o.Chenappa

2.The Correspondent,
Parimala Nursery & Primary School,
Door No.2/37, Sri Krishna Nagar,
Berigai Road, Shoolagiri - 635 117.
Krishnagiri District.

... Respondents

Civil Miscellaneous Petition filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.08.2019 made in M.C.O.P.No.366 of 2017 on the file of Motor Accident Claims Tribunal, Additional District Judge, Hosur.



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For Petitioner : Mr.S.Arunkumar
For Respondents : Mr.Ram Prabhu
for Mr.S.P.Yuvaraj [R1]

JUDGMENT

[Made by **R.SUBRAMANIAN, J**]

The Insurance Company is on appeal. Challenge is to the quantum of compensation awarded at Rs.28,45,682/- for injuries suffered by the claimant/first respondent in a motor accident that occurred on 28.01.2017 at about 07.30 hours.

2. According to the claimant, when he was riding his Hero Splendour motorcycle from Paruveedhi towards his house on the left side of the road slowly and cautiously, the driver of the bus bearing registration No.TN-90-BT-0507 belonging to the second respondent herein drove the same in a rash and negligent manner, without observing the traffic rules, in the opposite direction and hit against the motorcycle resulting in very serious injuries to the claimant. As a result of the accident, the claimant suffered a fracture on the left femur and other injuries in the abdomen. He was admitted in the Srinivasa Speciality Hospital at Hosur as an inpatient. A case was registered



by the Shoolagiri police against the driver of the bus. Contending that the

driver of the bus was solely responsible for the accident and that the injuries have resulted in him suffering a disability which has impacted the earning capacity of the petitioner, the petitioner sought for compensation of Rs.75,00,000/-. The quantum of compensation was justified by contending that the claimant was a floriculturist and was also a small time building contractor.

3. The owner of the offending vehicle viz., the bus remained *ex parte* and the insurance company resisted the claim contending that the accident did not occur in the manner as suggested by the claimant. It was pointed out that the claimant has suppressed his own negligence. The claimant was also put to strict proof of the income particulars and the disability.

4. At trial before the Tribunal, the claimant was examined as PW-1 and Exs.P1 to P12 were marked. The Accident Register copy and Temporary Registration Certificate of the bus and the witness summons were marked as Exs.R1 to R3. No oral evidence was let in on the side of the Insurance



Company.

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5. On the assessment of evidence placed before it, the Tribunal concluded that the rash and negligent driving on the part of the bus driver was the cause for the accident. In coming to the conclusion, the Tribunal relied upon the First Information Report, which has been marked as Ex.P1. The claimant himself, being an eye witness to the accident, has explained as to how the accident took place. The absence of contra evidence on the part of the insurance company was also cited by the Tribunal in support of its conclusion. On the quantum, the Medical Board has assessed the disability at 60%. The Tribunal took the entire disability as assessed as functional disability and concluded that the claimant will be entitled to compensation based on multiplier method since the functional disability had resulted in loss of earning power. The Tribunal fixed the monthly income at Rs.10,000/- and adopted the multiplier '17'. It arrived at the loss of earning capacity at Rs.12,24,000/-. The Tribunal awarded a sum of Rs.20,000/- towards transportation, Rs.30,000/- towards extra nutrition, Rs.40,000/- towards attender charges, Rs.50,000/- towards pain and suffering, Rs.10,000/- towards loss of amenities, Rs.9,62,082/- towards medical bills

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and Rs.20,000/- towards future medical expenses and loss of future prospects was arrived at Rs.4,89,600/-. Thus, the total compensation worked out to Rs.28,45,682/-.

6. Mr.S.Arunkumar, learned counsel appearing for the Insurance Company, would vehemently contend that the Tribunal ought not to have accepted the report of the Medical Board as it is without looking into the fact that the claimant had only a fracture in the left femur and therefore, the assessment of functional disability at 60% is not correct. Learned counsel would also point out that the other injuries are not very serious.

7. Contending contra, Mr.Ram Prabhu, learned counsel appearing for first respondent/claimant, would draw our attention to Ex. P11, discharge summary, issued by the Srinivasa Speciality Hospital wherein it is stated that apart from the fracture in the left femur, there is also ortho-fix insitu and urethral stricture with post supra pubic catheter insitu. Learned counsel would submit that the claimant is even today on assistance of catheter. The contents of the discharge summary Ex.P11 extracted by the Tribunal would show that the claimant had suffered a fracture of left femur with ortho-fix



insitu and urethral stricture with post supra pubic catheter insitu.

Considering the said injuries, the District Medical Board has fixed the disability at 60%.

8. Learned counsel for first respondent/claimant would highlight the fact that the claimant is even today on assistance of catheter and therefore, the compensation awarded is just and reasonable. In fact, the first respondent/claimant has also filed a cross-objection seeking enhancement.

9. No doubt, a fracture of the left femur would not cause 60% disability but if a person is put on catheter permanently, the same would definitely amount to a functional disability as he cannot do the same work as he was doing before the accident. We, therefore, do not see any reason to disturb the finding of the Tribunal on the quantum. Once it is found that the disability is 60% and that too for a person who works as a mason or building contractor to be moving around with a catheter is a most difficult thing to do. We are, therefore, unable to fault the Tribunal for having taken the disability as suggested by the Medical Board as functional disability considering the condition of the claimant.



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10. No doubt, the Tribunal has granted compensation of Rs.4,89,600/- on future prospects, which according to Mr.S.Arunkumar, is not justified. On an overall consideration of the circumstances and the condition of the claimant, we treat the said compensation as compensation towards loss of amenities and pain and sufferings. We, therefore, do not see any reason to interfere with the award and reduce the quantum.

11. Arguing on the cross-objection, learned counsel for first respondent/claimant would submit that the claimant should be awarded some more amount for future medical expenses and attender charges.

12. The claimant is entitled to some more amount on pain and sufferings and for future medical expenses. Since we have confirmed the award of Rs.4,89,600/- towards future prospects, we do not see any reason to award any amount as claimed by learned counsel for first respondent/claimant.

13. The Civil Miscellaneous Appeal as well as the Cross Objection



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are dismissed confirming the award of the Tribunal. There shall be no order

as to costs in the appeal.

The Insurance Company shall deposit the award amount, less the amount if any already deposit, with proportionate interest within a period of twelve (12) weeks from the date of receipt of a copy of the order. On such deposit, the claimant shall be entitled to withdraw the same. The direction to pay and recover is confirmed. Consequently, connected miscellaneous petition is closed.

[R.S.M., J] [N.S., J]
22.12.2023

Index: No
Speaking Order
Neutral Citation : No
gm

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



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