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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2023

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THE HONOURABLE MRS. JUSTICE N. MALA

C.M.A.No.1155 of 2020 &
CMP.No.7274 of 2020

The Manager-Claims,
M/s. Chola mandalam MS General
Insurance Company Limited,
"Dare House", II Floor,
No.2, N.S.C. Bose Road,
Chennai 600 001.

.....

Appellant

-vs-

1. Pachiappan,
2. The Correspondent,
Shree Shirdi Sai Vidhyalaya,
Nursery and Primary School,
Edapalli Village,
Achettipalli Post,
Hosur Taluk,
Krishnagiri District

...

Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 praying to set aside the decree and judgment dated 13th August, 2019 passed in MCOP.No.60 of 2018 by the Motor Accidents Claims Tribunal (Additional District Court) at Hosur.

For Petitioner : Mr. J. Michael Vusuvasam

For Respondent: Mr.M.P.Saravanan for R2



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company against the decree and judgment dated 13.08.2019 passed by the Motor Accidents Claims Tribunal (Additional District Judge), Hosur in M. C. O. P. No. 60 of 2018 challenging the quantum of compensation awarded by the tribunal.

2. The facts of the case leading to filing of this appeal are as follows;

(a) The 1st respondent herein has filed a claim petition in MCOP.No.60 of 2018 before the Motor Accidents Claims Tribunal stating that, on 09.10.2017, while he was riding his motor cycle towards Hosur on Denkanikottai – Hosur Road, a bus bearing registration No.TN-70-S-9816, belonging to the 2nd respondent and insured with the appellant insurance company, which was standing on the said road, was suddenly moved by its driver in a rash and reckless manner towards right side, due to which, the petitioner, who was riding his motor cycle at the right side of the bus, dashed against the bus. Owing to the said impact, the petitioner fell down and sustained fractures on his tibia and fibula. Pursuant to which, the 1st respondent/claimant was taken to



Government Hospital, Hosur for treatment and thereafter to Srinivasa Speciality Hospital, Hosur for further treatment.

(b) In the said claim petition, the 1st respondent has claimed a compensation of Rs.20,00,000/-, against the 1st respondent - owner of the vehicle and 2nd respondent, the insurer of the vehicle.

(c) The Insurance company filed its counter disputing the claim of negligence, liability and quantum.

(d) Before the tribunal, on the side of the claimant, he examined himself as PW1 and marked exhibits Ex.P.1 to Ex.P.10 and on the side of the respondents, no witness was examined and no document was marked.

(e) The tribunal, after analysing the evidence of witnesses and documents, awarded a sum of Rs.12,09,397/- as compensation to the claimant along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.



3. Aggrieved against the quantum of Compensation awarded by the tribunal, the Insurance Company has filed the present Civil Miscellaneous Appeal challenging the quantum of compensation awarded by the tribunal on the higher side.

4. The compensation awarded by the tribunal under various heads is tabulated below;

<i>Heads</i>	<i>Compensation awarded</i>
Loss of earning capacity	Rs. 7,68,000/-
Transportation Charges	Rs. 10,000/-
Nutrition Charges	Rs. 10,000/-
Attender Charges	Rs. 10,000/-
Pain and sufferings	Rs. 30,000/-
Discomfort, frustration and loss of social enjoyment	Rs. 10,000/-
Medical Bills	Rs. 44,197/-
Future Medical Expenses	Rs. 20,000/-
Future prospects	Rs.3, 07,200/-
Total	Rs.12,09,397/-

5. The learned counsel for the appellant submitted that the tribunal has



erred in awarding compensation towards future prospects, when it had adopted the multiplier method of '16' for assessing the loss of earning capacity. As far as the compensation under the other heads are concerned, there is no serious dispute by the appellant Insurance Company. Thus he prayed for reducing the compensation awarded by the tribunal.

6. The learned counsel for the 2nd respondent submitted that the compensation awarded by the tribunal is just and fair and hence there is no need to interfere with the quantum of compensation awarded by the tribunal.

7. Heard both sides and perused the impugned judgment and other materials available on record.

8. It is not in dispute that the first respondent sustained fracture on his tibia and fibula bones on the right leg in an accident which occurred on 09.10.2017. The negligence and liability are not questioned by the Insurance Company and only the quantum of compensation awarded is challenged.

9. According to the 1st respondent, he was working as a mason and earning a sum of Rs.21,000/- per month. Due to the accident, he was unable to



work as before and therefore, he filed a claim petition claiming a sum of Rs.20,00,000/- as compensation. It is the contention of the learned counsel for the appellant that the tribunal granting a sum of Rs.7,68,000/- for loss of earning capacity and further granting Rs.3,07,200/- towards future prospects, is unjustified and highly excessive.

10. The short point, therefore, to be considered in this appeal is whether the amount awarded by the tribunal towards loss of earning capacity and future prospects is sustainable or not.

11. I am of the view that the tribunal having adopted the multiplier method of '16', ought not to have awarded a further sum of Rs.3,07,200/- towards future prospects and therefore, this court is of the view that the compensation awarded under the head 'future prospects' has to be set aside.

12.As far as the loss of earning capacity is concerned, the tribunal on the basis of Ex.P.10 disability certificate, issued by the District Medical Board, assessed the disability in respect of earning capacity at 40% and fixed his monthly income at Rs.10,000/- per month and awarded Rs.7,68,000/- towards



loss of earning capacity

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13. In my view, the tribunal has taken the disability in respect of earning capacity at 40%. It is no doubt true that the first respondent was working as a Mason. Due to the injuries, he could not continue his avocation in the same way as he was doing at the time of accident and therefore, I am of the view the functional disability of the first respondent can be fixed at 35% and therefore, the amount awarded by the tribunal as far as the loss of earning capacity is concerned, needs to be modified as follows;

$$\text{Rs.}10,000 \times 12 \times 35 / 100 \times 16 = 6,72,000/-$$

14. As far as the other heads are concerned, the compensation awarded by the tribunal under such heads are hereby confirmed. As already stated, the award towards future prospects is set aside.

15. In view of the foregoing discussions, the modified amount of compensation awarded by this court is tabulated below;



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<i>Heads</i>	<i>Compensation awarded</i>
Loss of earning capacity (Rs.10,000 x 12 x 35 / 100 x 16 = 6,72,000/-	Rs. 6,72,000/-
Transportation Charges	Rs. 10,000/-
Nutrition Charges	Rs. 10,000/-
Attender Charges	Rs. 10,000/-
Pain and sufferings	Rs. 30,000/-
Discomfort, frustration and loss of social enjoyment	Rs. 10,000/-
Medical Bills	Rs. 44,197/-
Future Medical Expenses	Rs. 20,000/-
Total	Rs.8,02,697/-

Accordingly, the 1st respondent/claimant is entitled to the compensation of Rs. 8,02,697/- along with interest as awarded by the tribunal.

16. The learned counsel for the appellant submitted that already 50% of the compensation awarded by the tribunal was depoited before the court. The appellant is therefore, directed to deposit the balance amount of modified compensation awarded by this court along with interest at the rate of 7.5% per annum, from the date of petition, till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the first respondent shall withdraw the said amount by making



proper application before the court below.

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17. In the result,

- this Civil Miscellaneous Petition is partly allowed.
No costs. Consequently, the connected CMP.No.7274 of 2020 is closed.
- The compensation awarded by the tribunal at Rs.12,09,397/- is modified by this Court at Rs.8,02,697/- along with interest at the rate of 7.5% per annum.
- The appellant insurance company shall deposit the modified compensation of Rs.8,02,697/-, less the amount, if any, already deposited before the tribunal along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.
- On such deposit being made, the 1st respondent shall withdraw the same on making appropriate application before the tribunal.



12.04.2023

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Index:yes/no

Internet:yes/no

To

The Motor Accidents Claims Tribunal, Hosur.

N. MALA, J.

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