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C.M.A.No.3558 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3558 of 2013

And

M.P.No.1 of 2013

The Branch Manager
The New India Assurance Co. Ltd.,
912, Mahalakshmi Chambers,
M.G.Road, Bangalore.

... Appellant

Vs.

1.Radha
2.Narendarkumar
3.Trans System Logistics International Ltd.,
Rep. by its MD

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.A.C.T.O.P.No.1323 of 2007, on the file of the Motor Accidents Claims Tribunal (Fast Track Court No.5, II Additional District Cum Sessions Judge) at Tirupur dated 31.07.2012.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : Mr.Ma.P.Thangavel for R1
R2 and R3 – Exparte



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J U D G M E N T

The third respondent Insurance Company before the Motor Accidents Claims Tribunal (Fast Track Court No.5, II Additional District Cum Sessions Judge) at Tirupur, is the appellant herein. This appeal has been filed against the judgment and decree made in M.C.O.P.No.1323 of 2007, by the Motor Accidents Claims Tribunal (Fast Track Court No.5, II Additional District Cum Sessions Judge) at Tirupur dated 31.07.2012.

2.The brief facts of the case is that on 22.10.2007 at about 15.30 hours, the first respondent was travelling as a pillion rider in a Motor Cycle bearing Registration No.KL 10 K 2618 in the Palakkad Road in front of Narayana Guru Polytechnic. At that time, a lorry bearing Registration No.KA 01 C 6324 driven by the second respondent who was employed under the third respondent in a rash and negligent manner dashed against the first respondent, due to which, the first respondent sustained grievous injuries.

3.Thereafter, the injured first respondent filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of



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Rs.10 Lakhs. After adjudication, the Tribunal, awarded a sum of Rs.4,46,280/- with interest at the rate of 7.5% from the date of petition till the date of payment and proportionate costs and directed the appellant Insurance Company to deposit the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4.The learned counsel appearing for the appellant submitted that the appellant had filed this appeal questioning the quantum of compensation awarded by the Tribunal and not the negligence. The learned counsel further submitted that the first respondent did not suffer any functional disability and the Doctor assessed her disability as 39.8%, however, the Tribunal adopted multiplier 16 and awarded compensation. Unless the injured prove that she is not able to continue her avocation and cannot earn as before, multiplier method cannot be adopted, however, in the absence of functional disability, the Tribunal adopted the multiplier method, which is not sustainable one.

5.The learned counsel appearing for the first respondent submitted that the first respondent sustained injuries due to the rash



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and negligent driving of the driver of the vehicle owned by the third respondent and due to the accident, her big toe was removed from her right leg and there was also fracture in the 2nd and 3rd toes in the right leg and there was also fracture in the fibula bone in the left leg and considering all these aspects, the Tribunal adopted the multiplier method and hence the impugned judgment and decree warrants no interference.

6.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent/ claimant and perused the materials available on record.

7.Admittedly, on 22.10.2007 at about 15.30 hours, the first respondent was travelling as a pillion rider in a Motor Cycle bearing Registration No.KL 10 K 2618 in the Palakkad Road in front of Narayana Guru Polytechnic. At that time, a lorry bearing Registration No.KA 01 C 6324 driven by the second respondent who was employed under the third respondent in a rash and negligent manner dashed against the first respondent, due to which, the first respondent sustained grievous injuries.



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8.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.4,01,280/- for loss of income, Rs.35,000/- for pain and sufferings, Rs.10,000/- for discomfort, extra nourishment and transportation charges with interest at the rate of 7.5% p.a. from the date of petition till realization.

9.The appellant has filed this appeal questioning the quantum of compensation awarded by the Tribunal and is not questioning the negligence aspect.

10.In the present case, due to the accident, the claimant's big toe was removed from her right leg and mere removal of big toe is not 100% disability. The Doctor has assessed the disability of the injured claimant as only 39.8% and has not stated that the injured has suffered functional disability and could not continue her avocation as before. The injured has not produced any proof for income before the Tribunal, however, the Tribunal has arrived at a conclusion that the injured would have earned Rs.5,500/- and has adopted the multiplier method and awarded compensation, which is not sustainable one. Hence, this Court is inclined to modify the quantum of compensation



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awarded by the Tribunal.

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11.This Court fix the disability at 35% and award a sum of Rs.3,000/- per percent of disability. Hence, the loss of income works out to Rs.1,05,000/- [35% disability X Rs.3,000/- = Rs.1,05,000/-]. The amount of Rs.35,000/- awarded for pain and sufferings in the opinion of this Court is just and reasonable and the same is confirmed. The amount of Rs.10,000/-awarded for discomfort, extra nourishment and transportation charges in the opinion of this Court is just and reasonable and same is confirmed. This Court is of the opinion that some amount has to be awarded for loss of income during the treatment period. Accordingly, this Court award a sum of Rs.10,000/- for loss of income during the treatment period.

12.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.4,01,280/-	Rs.1,05,000/-
2.	Pain and Sufferings	Rs. 35,000/-	Rs. 35,000/-
3.	Discomfort, extra nutrition and transportation charges	Rs. 10,000/-	Rs. 10,000/-
4.	Loss of income during the treatment period	---	Rs. 10,000/-



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S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
	Total	Rs.4,46,280/-	Rs.1,60,000/-

13.The injured claimant/ first respondent is entitled to total compensation of Rs.1,60,000/- with interest at the rate of 7.5% from the date of petition till the date of payment.

14.The civil miscellaneous appeal is partly allowed. The decree and judgment dated 31.07.2012 made in M.C.O.P.No.1323 of 2007 by the Motor Accidents Claims Tribunal (Fast Track Court No.5, II Additional District Cum Sessions Judge) at Tirupur, is modified to the above extent.

15.The appellant/ Insurance Company is directed to deposit the modified award amount before the Motor Accidents Claims Tribunal (Fast Track Court No.5, II Additional District Cum Sessions Judge) at Tirupur, within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimant/ first respondent is permitted to withdraw the modified award amount along with accrued interest and proportionate costs, on making proper and necessary application



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before the Tribunal. The Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

M.DHANDAPANI,J.
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16.The civil miscellaneous appeal is partly allowed. No costs.
Consequently, the connected miscellaneous petition is closed.

16.10.2023

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

To

1.The Motor Accidents Claims Tribunal (Fast Track Court No.5,
II Additional District Cum Sessions Judge) at Tirupur.

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