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C.M.A.No.3683 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2023

PRONOUNCED ON: 21.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.3683 of 2013

and

M.P.No.1 of 2013

The Branch Manager,
The Oriental Insurance Co. Ltd.,
Arunagiri Complex,
III Floor, 25/C, Bye-Pass Road,
Hosur Town,
Krishnagiri District – 635 109.

... Appellant/3rd respondent

Vs.

1.Muniappan
2.G.Krishnamurthy
3.C.Krishnan

... Respondent/Petitioner

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 15.07.2013 made in M.C.O.P.No.537 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri.

For Appellant : Mr.S.Arunkumar
For R1 : Mr.Mukund R. Pandiyan
For R2 & R3 : Ex-parte



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JUDGMENT

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The Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation granted to the claimant as per the award dated 15.07.2013, made in M.C.O.P.No.537 of 2013, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri, whereby, the Tribunal has awarded a sum of Rs.5,95,600/- as compensation along with interest at the rate of 6% per annum for the injuries sustained by the claimant.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The case of the claimant is as follows:

On 24.04.2007 at about 12.00 hours in the mid night, he was walking on the left side of Rayakottai to Denkanikottai Road, near Balaji Tomato Mandi, at that time, a Mahindra Pick-up Van, driven by its driver bearing Registration No.TN 30 H 5508 belongs to the second respondent came in uncontrollable speed, lost control and hit on the claimant, causing injuries to him. A Criminal case was registered against the driver of the



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goods vehicle in Crime No.262 of 2007 under Sections 279, 337 IPC on the file of the Rayakottai Police Station. Hence, the claimant has filed a claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained to him in the road accident.

4. Before the Tribunal, the first and second respondents, who are the driver and owner of the offending vehicle were remained ex-parte and have not contested the claim.

5. The third respondent insurer of the goods vehicle filed counter and contented that the accident was not occurred due to the negligent act of the driver of the van and the claimant has suddenly attempted to cross the road, which resulted in causing accident. Hence, the respondents are not liable to pay compensation. The claim amount is also on the higher side and there is no permanent disability sustained by him, prays to dismiss the petition.

6. Before the Tribunal, the claimant has examined himself as P.W.1 and one Dr.M.Devendiran was examined as P.W.2 and Exs.P1 to P15



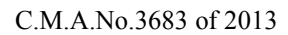
were marked. On the side of the respondents, no witness was examined and no documents marked.

7. The Tribunal in point No.1 has held that the first respondent-driver is the tortfeasor and in point No.2, after assessing the injuries, awarded a sum of Rs.5,95,600/- as compensation to the claimant.

8. Aggrieved over the quantum of compensation awarded by the Tribunal, the Insurance Company has filed this present Civil Miscellaneous Appeal.

9. The learned counsel for the Insurance Company submits that there is no document placed on record to show the avocation of the injured and the disability assessed for the injuries sustained by him is on the higher side, hence, the compensation awarded by the Tribunal needs to be modified.

10. The learned counsel for the first respondent/claimant submits that after considering the evidence placed on record, more



“Patient unable to move the right leg. Severe tenderness at hip right during mobilisation; 2x1 cm abrasion right over left side hip and 1x1 cm abrasion right left thumb. He sustained fracture on the right superior and inferior public rami and two other injuries sustained by him are simple in nature.”



13. Ex.P3-Discharge Summary issued by the Ganga Medical

Centre and Hospitals Private Limited, Coimbatore, wherein, it is recorded as

follows: *“Report on investigation X-Ray Reports: Pelvis - Fracture of superior Pubic Rami”* and he was given conservative treatment. He was admitted into the hospital on 25.07.2007 and discharged on 05.08.2007.

Ex.P4- Discharge Summary shows that the injured was again admitted into Om Sakthi Hospital, Dharmapuri on 08.09.2007 and undergone treatment for four more days and discharged on 11.09.2007. In the Discharge Summary, it is noted as follows: *“Diagnosis Right Epididamitis, complaint of swelling in right Scortum with pain since 3 days. Past history of: History of Road traffic accident 2 months back, diagnosed as Pelvis and treated in private Hospital.”* Thereafter, he once again admitted into Ganga Medical Centre and Hospitals Private Limited and diagnosis *“Acute Epididymo-Orchitis-Right Testis and Epididymis”* and procedure conservative treatment was given. It is also recorded that:

“Treatment Considerations: Patient with pervious history of pelvic injury presented with features of acute epididymo orchitis. Investigations revealed bacterial causes. The urologist's opinion was obtained and IV antibiotic with scrotal elevation given. Patient symptoms resolved. He needs investigation to rule out an obstructive lesion in his urethera”.

14. On 24.06.2013, P.W.2-Civil Assistant Surgeon,



Government Head Quarters has assessed the disability of the claimant and

WEB COPY issued Disability Certificate-Ex.P15. In Ex.P15, it is stated as follows:

“Pelvis-fracture Superior and inferior pubic ramus and resulted in pelvioning disruption Scrotal (விதை) injury leads to epididymo orchitis-Right. Due to (PTS) Post Traumatic Stiffness, (ROM) Restricted Movement of hip joint resulted in Right sacroileitis. Unable to lift the leg above 60 degrees and could not lift heavy objects. The injured sustained 55% of permanent disability”.

15. Based on the assessment made by him, he has deposed before the Tribunal that due to the fracture of superior and inferior pubic ramus resulted in pelvioning disruption, and above injuries caused scrotal injury and resulted in epididymo orchitis-Right. This injuries also resulted in diminishing his right leg movement restricted lifting above 60 degrees and assessed 55% of disability.

16. The claimant claims himself as a Trader, selling various agricultural goods. Even though there is no amputation, the injuries sustained by him on the hip and pubic rami, Pelvis ring disruption certainly disrupted to his regular day-to-day work from doing any work. However, it could not be assessed to the extent of 55% since the injuries sustained by



him is on hip fracture.

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17. As per the Judgment of the Hon'ble Supreme Court in ***Rajkumar vs. Ajaykumar*** reported in ***2011 (1) SCC 343***, this Court has considered the case of the claimant that he has sustained injuries on the hip which affect from doing his physical activities, more particularly, he could not lift heavy objects and being agricultural goods Trader, he requires to do manual work for lifting various agricultural things. Hence, this Court is of the view that loss of earning capacity must be held to the extent of 20% and the compensation to be awarded by adopting multiplier method and the Tribunal rightly adopted the same. However, the Tribunal has fixed the disability percentage on the higher side.

18. The Tribunal has properly applied multiplier '16' as per the Judgment of the Hon'ble Supreme Court in ***Sarla Varma and Others vs. Delhi Transport Corporation and Another*** reported in ***2009 ACJ 1298***. Accordingly, the claimant is entitled to get compensation of Rs.1,92,000/- $[5000 \times 12 \times 16 \times 20/100]$ under the head Disability.



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19. The Discharge Summary-Ex.P6 shows that he was continuously undergone various treatment from 25.07.2007 to 29.09.2007 and also he has suffered superior and inferior pubic ramus and also pelvioning disruption, the Tribunal has awarded Rs.30,000/- as partial loss of income. Considering the above injuries and also corroborated by exhibits, I am inclined to confirm the loss of income during the period of treatment. The Tribunal has also awarded medical bills of Rs.28,600/- and the same is acceptable. Accordingly, Transportation is modified to Rs.15,000/-. The loss of expectations of life, the Tribunal has awarded a sum of Rs.25,000/- is modified as loss of amenities Rs.30,000/-. The Tribunal has awarded a sum of Rs.20,000/- for Nutrition and Attender charges and the same is confirmed. The Tribunal has also granted a sum of Rs.50,000/- for Pain and sufferings and the same is also hereby confirmed. The claimant is also entitled for future prospects as held by the Hon'ble Apex Court in ***Jagdish vs. Mohan and Others*** reported in ***(2018) 4 SCC 571*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd.***, reported in ***2020 INSC 466 SC Website*** and accordingly 40% is awarded as future prospects.

20. Thus, the compensation awarded by the Tribunal is



modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	Rs.4,32,000/-	Rs.1,92,000/-	Reduced
2.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
3.	Nutrition and Attenders charges	Rs.20,000/-	Rs.20,000/-	Confirmed
4.	Partial loss of income/ Partial loss of income during treatment period	Rs.30,000/-	Rs.30,000/-	Confirmed
5.	Loss of expectation of life/ Loss of amenities	Rs.25,000/-	Rs.30,000/-	Enhanced
6.	Transport Charges	Rs.10,000/-	Rs.15,000/-	Enhanced
7.	Medical Bills	Rs.28,600/-	Rs.28,600/-	Confirmed
8.	Future Prospects (40% of Rs.1,92,000/-)		Rs.76,800/-	Granted
	Total	Rs.5,95,600/-	Rs.4,42,400/-	Reduced by Rs.1,53,200/-

21. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,95,600/- is hereby reduced to Rs.4,42,400/- [Rupees Four Lakhs Forty Two Thousand and Four Hundred only] together with interest at the rate of 7.5% per annum



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from the date of filing of Claim Petition till the date of deposit. The appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.537 of 2013 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Krishnagiri. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

21.08.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Principal District Judge,
Motor Accidents Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.



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K.RAJASEKAR,J.

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Pre delivery Judgment made in
C.M.A.No.3683 of 2013

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