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C.M.A.No.2539 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM

THE HON'BLE MR.JUSTICE R.KALAIMATHI

C.M.A.No.2539 of 2016

and

C.M.P.No.18046 of 2016

The United India Insurance Company Limited,
No.13-A, Nethaji Road,
Manjakuppam, Cuddalore.

Through

United India Insurance Company Limited,
Motor Third Party Service Hub.,
AR Plaza, 35-37, 45 feet Road Extension

Balaji Nagar, Saram,
Puducherry – 605 011.

... Appellant

Vs.

1. R.Venkat

2. K.Rameesha Beevi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgement and Decree dated 05.04.2016 in M.A.C.T.O.P.No.2331 of 2012 on the file of the Motor Accidents Claims Tribunal. (Chief Judicial Magistrate's Court) Cuddalore.



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For Appellant : Mr.P.Sankaranarayanan

For Respondents :

For R1 : Mr.B.Jawahar

For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the second respondent Insurance Company against the Judgment and Decree dated 05.04.2016 on the file of the Motor Accidents Claims Tribunal Chief Judicial Magistrate's Court, Cuddalore in M.A.C.T.O.P.No.2331 of 2012, challenging the quantum.

2. The claimant/first respondent herein had filed an application under Section 166(1) of the Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- for the injuries sustained by him in a motor accident that had taken place on 07.06.2012. The learned Tribunal has passed an award for a sum of Rs.7,76,400/- with 7.5% per annum from the date of filing of petition till the date of deposit.



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3. The brief facts of the case are as follows:-

On 07.06.2012 at about 9.45 PM, while the petitioner was traveling in a private bus, which belongs to the first respondent bearing Registration No.TN-31-H-7557, along the Cuddalore – Panruti Main Road at Nathapattu Bus Stop at that time the driver of the said bus drove the vehicle at a high speed, in a rash and negligent manner and suddenly applied the brake, due to which the petitioner was thrown out of the bus and sustained grievous injuries and multiple fractures. He was immediately admitted at the Government Hospital, Cuddalore and little later he was transferred to private hospital. Due to the injuries sustained by him on account of the accident, his earning capacity is drastically reduced and that he has estimated Rs.15,00,000/- The first respondent is the owner of the vehicle and the second respondent is the insurer of the first respondent's vehicle, both of them are jointly and severally liable to pay compensation to the claimant. Hence the claim petition.



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4. The details of the counter filed by the second respondent

Insurance Company are as follows:-

The petitioner is put to strict proof of as to how the accident occurred, age, occupation, monthly income, nature of injuries, nature of treatment that was undertaken and the details of medical expenses incurred by him and also possession of valid driving license of the driver of the vehicle, valid RC, FC and permit.

5. On the claimants side, the petitioner has examined himself as P.W.1 and Dr.Thiru.M.Balamurugan, Ortho and Dr.Thiru.K.Kalaivendhan, Dental Surgeon, were examined as P.W.2 and P.W.3 respectively. The petitioner filed documents Exs.P.1 to P.10 in support of his case. On the side of the second respondent Insurance Company, R.W.1 was examined and Ex.R1 and R2 were marked.



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6. The learned Tribunal having come to the conclusion that owing to the rash and negligent driving of the driver of the first respondent bus, accident had happened and as such the first respondent namely owner and second respondent Insurance Company with whom the insurance policy is in force in respect of the said erred vehicle held to be jointly and severally responsible for payment of compensation for the injuries sustained by the claimant.

7. The learned counsel for the appellant/second respondent Insurance Company would argue that based on the disability assessed by P.W.2 and P.W.3, functional disability should have been taken at 10% and amount awarded under the head of loss of amenities for whole body at Rs.1,40,000/- is totally incorrect and the age of the claimant fixed by the learned Tribunal is patently incorrect and sought to reduce the compensation.



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8. Per contra, the learned counsel for the claimant would contend that as per the age mentioned in the Wound Certificate, the learned Tribunal has correctly taken the age of the claimant. He would further contend that due to the effects of fracture over right patella, the claimant is unable to work as he did before as a driver. Therefore, the learned Tribunal has properly invoked the multiplier method which need not be interfered.

9. Heard the arguments of learned counsels for both sides.
Perused the materials available on records.

10. In order to prove the negligence of the driver of the first respondent bus, on the claimant side P.W.1 Venkat-claimant as well as informant to the police has been examined. On the second respondent Insurance Company side, the then Divisional Manager Tvl.Parthiban was examined as R.W.1 through him the final report in respect of Crime No.415 of 2012 dated 10.06.2012 was marked as Ex.R.2, wherein the final report reads that case is closed as mistake of fact.



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11. As no contra evidence was let in by the second respondent Insurance Company, the learned Tribunal has come to the conclusion that because of the rash and negligent driving of the driver of the first respondent bus, motor accident had happened and the liability was fastened on the owner of the vehicle namely the first respondent and the second respondent Insurance Company from whom, the Insurance Policy is taken and was in force.

12. It could be seen from the Wound Certificate and Disability Certificate viz., Ex.P.2 and P.10 issued by the Doctors P.W.2 and P.W.3., the claimant suffered fracture over right patella and fracture of mandible.

13. Taking into account of the disability assessed by both the Doctors viz., P.W.2 and P.W.3, the learned Tribunal has assessed the disability at 70% and the claimant being a driver, the learned Tribunal thought it fit to apply multiplier method and awarded



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Rs.5,54,000/- under the head of loss of earning capacity and
Rs.1.40.000/- under the head of loss of amenities for whole body are
under challenge.

14. Time and again this Court and the Hon'ble Supreme Court
have observed under what circumstances in injury cases multiplier
method may be invoked. The below said observation of the Apex
Court is quite relevant for the present context of the case.

15. The Hon'ble Supreme Court has observed in the case of
**Yadava Kumar vs. The Divisional Manager, National Insurance
Company Limited and Another**, reported in AIR 2010 SC 3741,
wherein it is held that it goes without saying that in matters of
determination of compensation both the Tribunal and the Court are
statutorily charged with a responsibility of fixing a 'just
compensation'. It is obviously true that determination of a just
compensation cannot be equated to a bonanza. At the same time the
concept of 'just compensation' obviously suggests application of fair



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and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable.

16. In the above said case for the fracture of distal end of left radius with fracture of left ulnar styloid process and for the fracture of distal end of right radius with mild diastasis in radioulnar joint and soft tissue swelling around wrist joint, the disability was assessed at 33% for the first injury and 21% for the second injury and the total disability of the whole body was assessed as 20%. As the injured happen to be a painter because of the injuries, it was held that he was bound to suffer loss of earning capacity. Hence, Multiplier method was invoked for calculating loss of future income.



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17. Based on the guiding principles set forth as mentioned supra, in this case admittedly the driver suffered fracture over right patella. Patella is nothing but knee cap. It is the largest sesamoid bone in the human body. When you look at the bone structure of the human knee, it is located anterior to the knee joint. It provides an attachment point for both the quadriceps tendon and the patellar ligament. In the case of patella fracture, knee will not function properly as the patella covered with cartilage provides a cushion to knee joint.

18. In this case, P.W.2 namely M.Balamurugan, an Orthopedic Surgeon has stated that perusal of X-Ray Report taken for the claimant shows that the right leg bone broken and the claimant suffers from Malunion and assessed disability as 20%. Therefore, it is vividly clear from the evidence of the claimant as well as the statement of P.W.2 an Orthopedic Surgeon, the claimant would have difficulties in walking, folding the right leg, applying force with the help of right leg and in doing incidental activities. Therefore,



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because of malunion would more significantly alter the mechanical axis of the bone, this alteration of the mechanical axis or joint alignment would result in decrease function of the patella. Because of the post effects of malunion over right patella definitely a person who is aged above 50 years will have difficulties in driving and other incidental activities, the disability assessed was 20%. The claimant being a driver definitely would find it very difficult to do the driver job as he done before.

19. As far as the age of the claimant is concerned, Ex.P.2., the Wound Certificate issued by the Government Hospital, Cuddalore, the age of the claimant is mentioned as 55 years. Whereas, the Disability Certificate issued by Dr.Kalaivendan, Dental Surgeon and Dr.M.Balamurugan, Orthopedian viz., Ex.P.7 and Ex.P.9, the age of the claimant is mentioned as 58 years and 61 years. Based on the said documents the claimant's age is fixed as 55 years by the learned Tribunal is acceptable.



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20. With regard to the facial fracture suffered by the claimant, the dental surgeon who is examined as P.W.3 has assessed the disability at 50% which is partial permanent. The injuries sustained by the claimant over his face are detailed in the disability certificate issued by P.W.3 reads as follows:-

Findings from the records

The victim alleged to have met with RTA on 24/5/14 -and sustained the following

injuries.

1. mobility of the mandible with Paralympic, angle of the mandible
2. mobility (80%) 12, 11, 21, 22, 23, 25, 26, 33, 34, 35, 43, 44, 45
3. mobility grade II mobility -

As per the X-ray and Scan reports he suffered.....

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Head Clerk
C.J.M.S. Court
Cuddalore.



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மேற்படி விபத்தினால் மனதாபநக்கு ஏற்பட்ட பாதிப்புகள்

- 1) Evidence of fractured site present
- 2) Difficulty in eating and speaking
- 3) Upper posterior and lower anterior teeth are missing (10)
- 4) Occlusion is not normal
- 5) Esthetis is compromised
- 6) Pain near TMJ region

As per my advice the X-ray of the affected region is taken and it shows old fracture of the mandible with loss of teeth and proper and screws present

21. P.W.2, an Orthopedic Surgeon stated that malunion is though a healed fracture which results in deformity of the bone, malunion close to a joint can more significantly alter the mechanical axis of the bone joint.



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22. In **Syed Sadiq vs. United India Insurance Company**

Limited, reported in (2014) 2 SCC 735, for a vegetable vendor in the year 2008, the notional income was fixed at Rs.6,500/- for 24 years old person. Though the claimant who was a driver said to have earned Rs.20,000/- per month, the Tribunal has fixed only Rs.6000/- per month. This Court deems fit to fix the income of the claimant/driver aged 55 years at Rs.8,200/- per month. With regard to future prospects as per the law laid down by the Hon'ble Supreme Court in *National Insurance Company Limited Vs Pranay Sethi and Others*, reported in 2017 (2) TN MAC 609 (SC), in respect of persons who are self employed and aged between 50-60 years, 10% future prospect to be added as follows:-

$$\text{Rs.8,200/-} + [\text{Rs.820/- (10\% of Rs.8,200/-)}] = \text{Rs.9020/-}$$

Rounded off to Rs.9,000/-



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23. In **Smt.Sarala Varma and Others vs. Delhi Transport**

Corporation and Another, reported in 2009 (2) TN MAC 1 (SC), the Hon'ble Supreme Court has tabulated the age group and the corresponding multiplier. As per the table for the age group of persons between 51-55, the multiplier to be adopted is 11m.

24. For the living person it is not necessary to deduct a portion for personal expenses. Based on the aforesaid discussions, the following formula emerges with regard to loss of earning capacity:-

$$\text{Rs.9000/-} \times 12 \times 11 \times 50\% = \text{Rs.5,94,000/-}$$

25. The Tribunal has awarded Rs.1,40,000/- under the head of loss of amenities is reduced to Rs.75,000/-. On perusal of the award of the Tribunal in all other aspects the award passed by the Tribunal appears to be reasonable and hence needs no interference.



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26 The award of the Tribunal is modified as follows:-

Under Column	Head	Amount awarded by the Tribunal	Amount awarded by this court	Award confirmed or enhanced or reduced or granted or set aside
(a)	Loss of earning capacity	Rs.5,54,400/-	Rs.5,94,000/-	Enhanced
(b)	Transport to hospital	Rs.10,000/-	Rs.10,000/-	Confirmed
(c)	Special Diet	Rs.10,000/-	Rs.10,000/-	Confirmed
(d)	Loss of Income (2 months)	Rs.12,000/-	Rs.12,000/-	Confirmed
(e)	Pain and sufferings at Rs.10,000/- per fracture Rs.7,500/- per Surgery (3Fr.,1Su.)	Rs.30,000/-	Rs.30,000/-	Confirmed
(f)	Attendant Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
(g)	Medical expenses (including Ex.P.6)	Rs.10,000/-	Rs.10,000/-	Confirmed
(h)	Loss of amenities for whole body 1/3 (25%x2000)	Rs.1,40,000/-	Rs.75,000/-	Reduced
	Total	Rs.7,76,400/-	Rs.7,51,000/-	



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27. In the result,

1. The Civil Miscellaneous Appeal is partly allowed.
2. The appellant / Insurance Company is directed to deposit the modified award amount of compensation of **Rs.7,51,000/-** together with interest at 7.5% and cost, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.
3. On such deposit, the first respondent/claimant is permitted to withdraw the same together with interest and cost, by filing suitable application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

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R.KALAIMATHI, J.

rgm

To:

Motor Accidents Claims Tribunal, Cuddalore
(Chief Judicial Magistrate's Court), Cuddalore.

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