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C.M.A.No.2958 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2958 of 20179

and

C.M.P No.15774 of 2019

The Manager
Royal Sundaram Aliance Insurance Co. Ltd.,
DB Plaza, 3rd floor,
No.47, Whites Road,
Chennai 600 014.

.. Appellant

Vs.

1.Venkatesh
2.S.Prakash
3.S.Thiyagarajan

.. Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.08.2018 made in MACTOP.No.19 of 2014 on the file of the Motor Accident Claims Tribunal (Additional District Judge) Hosur.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.R.Jayaprakash for R1
No Appearance for R2
Died - R3

1/10



C.M.A.No.2958 of 2019

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J U D G M E N T

The appeal on hand is filed against the judgment and decree dated 20.08.2018 passed in MACTOP.No.19 of 2014, on the file of the Motor Accident Claims Tribunal (Additional District Judge) Hosur.

2 . The brief facts of the case are as follows:

On 04.01.2011 at 8.00 a.m., the first respondent/claimant was proceeding in his TVS XL Super Heavy Duty moped bearing Regn.No.TN-24-Y-4847 from Jeemangalam to Bagalur towards Bagalur. When the claimant was travelling near Dinnapalli Bus stop, a Indigo Car bearing Regn.No.TN-24-T-1671 belonging to the 1st respondent and insured with the 3rd respondent, driven by the second respondent in a very rash and negligent manner was coming in the opposite direction from Bagalur to Hosur, suddenly dashed against the claimant and his TVS XL Super Heavy Duty moped and he fell down and sustained grievous injuries and his right leg has been fractured. The Bagalur Police registered a case against the

2/10



driver of the car in Crime No.17 of 2011 under Sections 279 and 337 of IPC. Due to the said accident, the first respondent/claimant has sustained grievous injuries. Thereafter, the claim petition was filed by the claimant and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.7,24,863/-.

3. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is highly excessive, arbitrary and exorbitant. It has failed to note that the accident occurred solely due to the rash and negligent driving of the rider of the two wheeler without following the traffic rules and suddenly dashed against the Indigo car which was coming on the opposite direction and caused the accident. It failed to note the admission of PW1 who admits that he has not possessed of any driving license to run the two wheeler. It failed to note that the claimant himself solely contributed to the accident by his entire negligence, that too, without having valid driving



license and the claimant himself is the tortfeasor and hence the appellant is not liable to pay any compensation. It erred in accepting the disability of 45% without referring the matter to the medical board, which was the principle laid down by the Division Bench of this Court as held in 2016 (1) TNMAC 609 which deals with the practice and procedure in respect of assessment of disability which was not followed in this case. It erred in fixing the multiplier method in the case of injury of 45% and awarding a sum of Rs.4,53,600/- towards loss of earning and towards partial permanent disability is on the higher side. For the aforesaid reasons, the award of the Tribunal is liable to be dismissed. Hence, he prays for allowing of the Appeal.

4. The learned counsel for the 1st respondent/claimant has submitted that the Insurance Company had already deposited 75% of the award amount granted by the Tribunal as conditional deposit as per the order of this court dated 01.08.2019. He disputed the said contention by stating that on consideration of the grievousness of the injuries, the Tribunal has



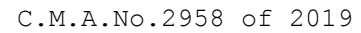
C.M.A.No.2958 of 2019

awarded the compensation and there is no excessive award and accordingly,
the appeal is liable to be dismissed.

5. Insofar as the assessment of disability by the Tribunal is concerned, the PW2/doctor assessed the disability at 45% for right leg fracture, considering the nature of injuries and the evidence of PW2/Doctor and Ex.P2/Wound certificate, Ex.P9/x-ray and Ex.P10/disability certificate. Hence, the disability percentage fixed by the Tribunal is a correct assessment.

6. Considering the nature of the injuries as well as the disability sustained by the claimant, this Court is of the considered opinion that it is not a functional disability and in fact, the claimant was working as a mason. Therefore, there is no much future loss of income. This being the factum, the award of compensation by adopting the multiplier method is unnecessary. Considering the nature of injuries, this court is inclined to adopt percentage method while calculating compensation. Hence, a sum of

5/10



8. Taking note of the fact that he has also taken treatment in the private Hospital even after discharge from the Government Hospital, Hosur and due to the grievous injuries sustained by him, he would have taken nutritious food for some months. Hence, it would be appropriate to fix a sum of Rs.15,000/-, Rs.15000 and Rs.75,000/- towards Transportation



charges, nutrition charges and pain and sufferings respectively. This court is not inclined to grant any amount under the head of loss of future prospects.

9. Insofar as the other heads of the compensation are concerned, the assessment of the compensation granted by the Tribunal is a just and reasonable one and they do not call for any interference by this Court.

10. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of earning power	4,53,600/- (6000x12x45% x14)	1,35,000/- (3000 x 45%)
Medical expenses	32,863/-	32,863/-
Future medical expenses	20,000/-	30,000/-
Transportation charges	10,000/-	15,000/-
Nutrition charges	10,000/-	15,000/-



C.M.A.No.2958 of 2019

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Pain and sufferings	50,000/-	75,000/-
Loss of future prospects	1,13,400/-	NIL
Attender charges	10,000/-	10,000/-
Discomfort, frustration and loss of social enjoyment	25,000/-	25,000/-
Total	7,24,863/-	3,37,863/-

11. In the result,

(i) This appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

(ii) The Appellant / Insurance Company is directed to deposit the modified award amount of **Rs.3,37,863/-** along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited (as per order of this court dated 01.08.2019) to the credit of MACTOP.No.19 of 2014 within a period of six weeks from the date of receipt of a copy of this



C.M.A.No.2958 of 2019

Judgment.

WEB COPY (iii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

20.04.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
gv



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C.M.A.No.2958 of 2019

A.A.NAKKIRAN, J.
gv

To

1.The Motor Accident Claims Tribunal,
Additional District Judge) Hosur.

2.The Section Officer,
V.R Section,
High Court, Madras.

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and
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10/10