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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.345 of 2020
and
C.M.P.No.2259 of 2020

The New India Assurance Co. Ltd.,
Having its Divisional Office at Calicut,
Shafeer Complex Extension,
Opp. YMCA, Kannur Road,
Kerala State. ... Appellant

Vs.

1.B.Midhun Prabhu
2.V.S.Suresh Babu
3.V.Hameed
[2nd & 3rd respondents remained exparte and
notice dispensed with for them] ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgement and Decree made in M.A.C.T.O.P.No.338 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode, dated 31.10.2018.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.M.Mariappan [R1]
Exparte [R2 & R3]

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JUDGEMENT

Questioning the procedure adopted by the Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode, in computing the quantum of compensation in M.A.C.T.O.P.No.338 of 2016, dated 31.10.2018, the insurance company has filed the above appeal.

2. As per the claim petition, on 07.09.2016 at about 2.30 p.m., the claimant was riding his motorcycle bearing Regn.No.TN-39-BP-3317 along with his friend Premkumar as pillion rider and when he stopped his motorcylce near Sathi to Gobi, a lorry bearing Regn.No.KA-9-A-8777 from Gobi to Sathi road, driven by its driver in a rash and negligent manner, hit against the motorcycle of the claimant, due to which, the claimant and the pillion rider fell down on the road and the claimant sustained bone fracture and multiple grievous injuries. For the injuries suffered by the claimant, the claimant had filed a claim petition claiming a sum of Rs.7,00,000/- as compensation before the Tribunal in M.C.O.P.No.338 of 2016.

3. Before the Tribunal, the claimant examined himself as P.W.1

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and marked 15 documents viz., Ex.P.1 to Ex.P.15. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal has marked the Disability Certificate received from District Medical Board as Ex.C.1. After adjudication, the Tribunal by its award dated 31.10.2018 awarded compensation in a sum of Rs.5,63,300/- with an interest of 7.5% p.a. directing the insurance company to pay the said compensation. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, the procedure adopted by the Tribunal for awarding compensation towards functional disability is contrary to the ratio laid down by the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343.*** On the sole ground, the present appeal is filed.

5. Per contra, the learned counsel appearing for the first respondent/claimant submitted that, the medical board assessed the

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disability at 40% and the Tribunal by arriving at a conclusion that the disability suffered by the claimant is functional disability and awarded compensation, which cannot be interfered with and the other heads awarded by the Tribunal are just and reasonable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.

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

7. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to adoption of multiplier for temporary disability suffered by the claimant. A perusal of the award reveals that, in order to ascertain the disability suffered by the claimant, he was referred to the District Medical Board. Ex.C.1 is the disability certificate with regard to assessment of the medical with regard to disability of the claimant, which has been assessed at 30% temporary disability and 10% temporary disability for his head injury. The Hon'ble

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Apex Court has elaborately discussed with regard to ascertainment of functional disability in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343*** and the relevant portion of the judgment is as follows :-

> *"10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of `loss of future earnings', if the claimant continues*

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in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may."

8. A perusal of the above decision makes it clear that, if the Tribunal based on evidence arrives at a conclusion that the claimant cannot be able to continue his avocation after the accident because of the injuries suffered in the accident, then the Tribunal can pass award in favour of the claimant by considering the disability suffered by the claimant as functional disability. In the case on hand, the claimant was a student and he was not employed anywhere and the temporary disability assessed by the medical board at 40% is not functional disability, however, the claimant has continued his studies and finished his education. Such being the case, the disability suffered by the claimant is

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not functional disability. Hence, the adoption of multiplier method by the Tribunal in awarding a sum of Rs.4,02,200/- towards disability and loss of earning power is totally erroneous and the same is liable to be modified. Therefore, taking a sum of Rs.4,000/- per percentage of disability and fixing the disability sustained by the first respondent/claimant at 40%, the compensation towards disability and loss of earning is reassessed on percentage basis i.e., Rs.4,000/- x 40 = 1,60,000/- and, accordingly, the compensation towards disability and loss of earning is reduced from Rs.4,02,200/- to a sum of Rs.1,60,000/-.

9. Further, this Court is of the view that the compensation awarded by the Tribunal under the other heads, viz., loss of income, transport expenses, extra nourishment, damages for clothes and articles, medical expenses and pain and sufferings, are just and reasonable and the same are confirmed.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

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S.No.	*Description*	*Awarded by the Tribunal (Amount in Rs.)*	*Awarded by this Court (Amount in Rs.)*
1	Loss of Income	13,300/-	13,300/-
2	Transport expenses	5,000/-	5,000/-
3	Extra nourishment	3,000/-	3,000/-
4	Damages for clothers and articles	500/-	500/-
5	Medical expenses	89,300/-	89,300/-
6	Pain and suffering	50,000/-	50,000/-
7	Disability and loss of earning power	**4,02,200/-**	**1,60,000/- (reduced)**
	Total	**5,63,300/-**	**3,21,100/-**

11. Accordingly, the civil miscellaneous appeal is partly allowed and the impugned award of the Tribunal is modified, reducing the compensation amount from **Rs.5,63,300/-** to **Rs.3,21,100/-**. The appellant/Insurance Company is directed to deposit the modified award amount to the credit of M.C.O.P.No.338 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the

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first respondent/claimant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode.

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

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M.DHANDAPANI, J.,

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