



C.M.A.No.1506 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2023

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.1506 of 2018

and

C.M.P.No.11989 of 2018

M/s. Reliance General Insurance Co.Ltd,
Having its Branch Office at 2nd Floor,
Harita Centre, D.No.9/65,
Avinshi Road, Coimbatore- 641 037.

... Appellant

Vs.

1. K.Mohan

2. D.Darryl Jossep Dhanraj

3. D.Ashwin Samuvel

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act 1988, against the award and decree dated 23.08.2017 made in M.C.O.P.No.197 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode.

For Appellant : Mr.S.Arun Kumar

For R1 : Mr.R.Nalliappan



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JUDGEMENT

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This Civil Miscellaneous Appeal has been filed against the Award and decree dated 23.08.2017 passed in M.C.O.P.No.197 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode.

2. Appellant is the Insurance Company. First respondent herein is the claimant who filed the claim petition in M.C.O.P.No.197 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode. Second respondent herein is the driver of the motor cycle bearing Registration No.TN.40-J-9029 and the third respondent herein is the owner of the offending vehicle.

3. Case of the claimant before the Tribunal is that on 01.08.2015 at about 11.45 p.m., while the claimant was walking on the Karamadai road at Mettupalayam, near Tamil nadu Mercantile Bank ATM Centre, at that time, the second respondent herein came by motor cycle bearing Registration No.TN.40-J-9029 in a rash and negligent manner, dashed



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against the claimant, due to which, the claimant sustained grievous injuries. Hence the claim petition.

4. Learned counsel appearing for the appellant/Insurance Company submitted that without any valid reason, the Tribunal has applied multiplier method and awarded compensation to the claimant, which is against law. The Doctor, P.W.3 who assessed the disability of the claimant has not given treatment to the injured. The loss of income has not been proved by the claimant. The Tribunal has adopted multiplier method without any permanent disability and loss of earning capacity, which is against the principles of law laid down by the Hon'ble Apex Court in various decisions. The compensation awarded by the Tribunal is excessive which does not reflect "just compensation". The Tribunal only on sympathetic grounds, awarded exorbitant compensation to the claimant, which warrants interference by this Court.

5. Learned counsel appearing for the first respondent/claimant submitted that the claimant sustained clavicle bone fracture at right leg



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and suffered from loss of hearing in the right ear, grievous injury on the head and right wrist and abrasion all over the body. He spent nearly Rs.3,00,000/- for taking treatment for severe head injury. Further, he was taking treatment as an in-patient from 02.08.2015 to 08.08.2015. He has also taking treatment as an out-patient till the date of filing the claim petition. The claimant was hale and healthy at the time of accident and he was earning a sum of Rs.11,200/- by way of salary and along with batta, totally he earned not less than a sum of Rs.20,000/- per month. He was working as conductor in Tamil Nadu State Transport Corporation, Coimbatore Division, Mettupalayam Branch as temporary worker. As a result of the accident, he sustained grievous injuries and suffered from bone fracture, and hence as before, he could not continue his work after the accident. Considering the age of the claimant, nature of the job which he was doing and the nature of the injuries sustained by him, the Tribunal has awarded compensation on various heads which are reasonable and the same is “just compensation”. Hence he prayed for dismissal of the Civil Miscellaneous Appeal.



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6. The case of the first respondent/claimant is that due to accident, he sustained multiple injuries including head injury, fracture and bone fracture on the right leg. He spent nearly a sum of Rs.3 Lakhs for taking treatment for multiple grievous injuries. He also suffered from loss of hearing in the right ear. After considering all the medical records, the doctor has fixed the disability at 58% . Hence, he filed the claim petition in M.C.O.P.No.197 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode. The Tribunal, after considering the materials placed on record, has awarded compensation of a sum of Rs.7,25,900/- to the first respondent/claimant, by fixing the liability on the appellant/Insurance Company, which is a “just compensation”.

7. Considering the materials placed on record, it is found that the accident is not in dispute. The liability is also not in dispute. The only dispute raised by the appellant/Insurance company is about the quantum of compensation and the method of calculating the award of compensation.



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8. The first point raised by the learned counsel for the appellant/Insurance Company is that the first respondent/claimant has not proved his loss of earning capacity due to accident. The second point raised by the learned counsel for the appellant/Insurance Company is that the multiplier method adopted by the Tribunal is not correct.

9. As far as the first point is concerned, though the first respondent/claimant met with an accident, due to which, he sustained multiple injuries and some of them are grievous in nature, and also he sustained head injury and he took treatment, but he has stated that he was working as Conductor and earning sum of Rs.280/- per day as daily wage. Further, he has taken treatment and was under rest for 161 days. The Tribunal had adopted multiplier method and has taken the functional disability at 30%, and awarded Rs.3,95,100/- for the loss of earning power.



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10. 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 is employed and more specifically, he was doing his conductor work. But the first respondent/claimant has not proved the loss of income and loss of earning capacity. The first respondent/claimant after 161 days of the accident, is regularly attending the daily work as Conductor in Transport Corporation and he has also not pleaded and proved that, after accident, he lost his earning capacity. He has been continuously doing his work and got the same income after the accident also. Hence, he is not entitled to get the compensation as awarded by the Tribunal under the head “loss of earning power”. Therefore, there is no future loss of income. Hence, loss of earning power would not arise. Hence, the first respondent/claimant is not entitled to get any compensation as awarded by the Tribunal under the head “Loss of earning power”.



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11. As per Disability Certificate Ex.P21, the Doctor has fixed 58% disability, however, as already stated, the first respondent/claimant was able to do his work as he was doing earlier before the accident. Hence, this Court finds that fixing the disability at 50% and determining a sum of Rs.4,000/- for each percentage of disability, is just and proper compensation under the head “Disability”. Accordingly, the disability compensation is modified to $\text{Rs.4000} \times 50\% = \text{Rs.2,00,000/-}$ by this Court, instead of Rs.3,95,100/- assessed by the Tribunal.

12. Insofar as the other heads of the compensation are concerned, the assessment of the same by the Tribunal has resulted in “just compensation” and it does not call for any interference by this Court.

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



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of income	45,000	45,000
Transport Expenses	4,000	4,000
Extra Nourishment	10,000	10,000
Damages for cloths and articles	500	500
Medical Expenses	1,31,300	1,31,300
Pain and sufferings	50,000	50,000
Disability	90,000	2,00,000
Loss of earning Power	3,95,100	Nil
Total	7,25,900	4,40,800

14. In the result,

(i) This appeal is partly allowed and the appellant/Insurance Company is directed to deposit the modified award amount i.e, Rs.4,40,800/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.197 of 2017 within a period of six weeks from the date of receipt of a copy of this Judgment. The appellant/Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them before the Tribunal.



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(ii) 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.

(iii) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Erode.
2. The Section Officer,
VR Section,
High Court, Chennai.



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P.VELMURUGAN, J.

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