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C.M.A.No.1869 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1869 of 2018

M/s.National Insurance Company Ltd.,
Division-III, 2nd Floor,
No.741, Annasalai,
Chennai-600 002.

... Appellant/Respondents-II

Vs

1.Palanimuthu
2.R.M.Narayanan

... Respondent/Petitioner
... Respondent/Respondents-I

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment passed in M.A.C.T.O.P.No.1497 of 2014 dated 07.06.2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant

... M/s.N.B.Surekha

For Respondents

... No Appearance [R1]
... Notice not in ready [R2]



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JUDGMENT

Aggrieved by the impugned award dated 07.06.2017 passed by the Motor Accident Claims Tribunal, 3rd Small Cause Court, Chennai in M.A.C.T.O.P.No.1497 of 2014, the Appellant/Insurance Company has filed the present appeal questioning the quantum of compensation fixed by the Tribunal.

2. It is the case of the claimant that on 11.2.2014 at about 12.45 p.m., when the claimant was trying to cross the road, the car bearing registration No.TN 63 AE 3236, driven by its driver in a rash and negligent manner, dashed against the petitioner resulting in the claimant sustaining grievous injuries for which the claimant had been admitted in the hospital. For the injuries suffered and the loss caused to the claimant, the claimant filed the claim petition claiming compensation.

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



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examined P.W.2 & P.W.3 and marked Ex.P-1 to Ex.P-10. No witnesses were examined on the side of the respondents nor any documents were marked.

After contest, the Tribunal had awarded the compensation amount of Rs.15,83,000/- to the claimant. Aggrieved by the quantum of compensation, the Appellant-Insurance Company has filed the present Appeal.

4. Learned counsel appearing for the Appellant/Insurance-Company submitted that two doctors were examined by the claimant, who had given different versions with regard to the percentage of disability suffered by the claimant. However, without properly advertng to their deposition, the Tribunal has erroneously considered the disability at 100% and had awarded loss of earning to the appellant, which is wholly erroneous. It is the further submission of the learned counsel that the adoption of multiplier method by the Tribunal to compute the compensation towards the loss of earning is wholly erroneous when there is no material to show that the claimant cannot discharge any work. It is the further submission of the learned counsel that the compensation awarded under the other heads are excessive and the same



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deserves to be modified.

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5. Though notice was served on the 1st respondent and his name printed in the causelist none appeared on behalf of the respondents today. Considering the pendency of the appeal which is of the year 2018, this Court is inclined to dispose of the matter based on the materials available on record.

6. The appellant is not questioning the accident or its liability to pay the compensation. The whole case of the appellant is on the adoption of multiplier method and also the fixation of disability.

7. In this regard, a careful perusal of the materials available on record reveals that two doctors were examined as P.W.2 and P.W.3 and both the doctors have given varying percentages of disability. While one of the doctor had assessed the disability at 65%, the other doctor had assessed the disability at 40%. The Tribunal, based on the said evidence had computed the disability at 29.16% and converting the same to whole body disability, had arrived at



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100%. However, there is no discussion as to how the Tribunal had computed the disability at 29.16% to convert it to 100% in respect of whole body, more particularly with regard to earning capacity.

8. The nature of injuries suffered by the claimant, coupled with the disability assessed by the two doctors, of varying percentages, clearly lead this Court to the only inference that the average of the two disabilities assessed would be the just and reasonable fixation of partial permanent disability and in such view of the matter, this Court assesses the partial permanent disability suffered by the claimant at 55%.

9. Insofar as the adoption of multiplier method is concerned, the circumstances in which the said method has to be adopted has been discussed by the Apex Court in the case of **Rajkumar – Vs – Ajaykumar** reported in **2011 (1) SCC 343**. Only where it is shown that the disability suffered by a person would incapacitate him from discharging any work thereby his earning would be greatly hindered, then adoption of multiplier method has to be resorted to. However, the injuries suffered by the claimant would not render him unable to earn any livelihood and that being the case adoption of



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multiplier method is erroneous. This Court is of the considered opinion that percentage method would be the method, which has to be adopted in the present case and by fixing Rs.4500/- per percentage, the amount under the head 'Loss of Earning' could safely be arrived at Rs.2,47,500/- ($55\% * 4500$).

10. Insofar as the compensation awarded under the head disability is concerned, the injuries suffered by the claimant resulting in disability could be the basis on which the disability could be fixed and compensation arrived at. This Court, in the fitness of things, based on the injuries suffered by the claimant, fixes the functional disability at 35% and adopting Rs.4500/- per percentage of disability, quantifies the compensation at Rs.1,57,500/- ($35\% * 4500$).

11. Further, the Tribunal has awarded a sum of Rs.20,000/- towards Extra Nourishment; Rs.10,000/- towards Transportation and Rs.1,000/- towards Damages to clothing and articles. This Court finds that the compensation awarded under above heads are just and reasonable which does not require any enhancement.



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12. It is case of the claimant that his income was affected during the period in which he was under treatment and the Tribunal has awarded a sum of Rs.2,000/- towards “loss of income during treatment period” which is meagre and requires enhancement. This Court considering the length of treatment taken by the claimant, awards a sum of Rs.18,000/- under the head 'Loss of Income during the Treatment' for a period of three months, by fixing the monthly income at Rs.6,000/- as no proof of income has been filed. Insofar as the compensation awarded towards pain and suffering and Attender Charges is concerned, the Tribunal has awarded a sum of Rs.40,000/- towards “Pain and Suffering” and Rs.10,000/- towards “Attender Charges” which is meagre. Considering the nature of injuries sustained by the claimant, the award under the said heads stands enhanced to Rs.50,000/- and Rs.20,000/- respectively. Further, the Tribunal ought to have awarded compensation under the head “Loss of life due to facial disfigurement” however, no compensation has been awarded under the said head. On perusal of the documents and the injuries sustained by the claimant, this Court feels it is just and reasonable to award a



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sum of Rs.50,000/- towards “Loss of life due to facial disfigurement”.

Accordingly, this Court awards a sum of Rs.50,000/- under the said head.

Further, a sum of Rs.20,000/- towards “Damages for Mental and physical shock” and Rs.50,000/- towards “Loss of amenities” is without any basis and hence no compensation can be awarded under the said heads and, accordingly, the same is deleted.

13. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

S.No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of income during treatment period	Rs.2,000/-	Rs.18,000/- (3 * Rs.6,000/-)
2.	Attender charges	Rs.2,000/-	Rs.10,000/-
3.	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
4.	Transport	Rs.10,000/-	Rs.10,000/-
5.	Damage to clothing and articles	Rs.1,000/-	Rs.1,000/-
6.	Medical bills	Rs.24,743/-	Rs.25,000/- (rounded off)
7.	Pain and Suffering	Rs.40,000/-	Rs.50,000/-
9.	Pecuniary loss /Loss of earning	Rs.13,26,000/-	Rs.2,47,500/-
10.	Disability	Rs.87,480/-	Rs.1,57,500/-



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TOTAL

Rs.15,83,300/-

Rs.5,89,000/-

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14. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.15,83,223/-** to **Rs.5,89,000/-**. The appellant / Insurance Company is directed to deposit the modified amount to the credit of M.C.O.P.No.1497 of 2014 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, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal.

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Index : Yes / No
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