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C.M.A.Nos.1216 & 1933 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.1216 & 1933 of 2020

and

C.M.P.No.14286 of 2020

Nagaraj ... Appellant in C.M.A.No.1216 of 2020 &
1st Respondent in C.M.A.No.1933 of 2020

Vs.

1.K.Rakkan ... 1st Respondent in C.M.A.No.1216 of
2020 & 2nd Respondent in C.M.A.No.1933 of 2020

2.M/s.The Oriental Insurance Company Limited,
Divisional Office (HUB), Mettur Road,
Parimalam Complex,
Erode – 1. ... 2nd Respondent in C.M.A.No.1216 of
2020 & Appellant in C.M.A.No.1933 of 2020

3.R.Murugankumar ... 3rd Respondent in both CMAs

[1st and 3rd respondents in C.M.A.No.1216 of 2020 remained exparte
before the tribunal, hence notice may be dispense with the 1st and 3rd
respondent]

Prayer in C.M.A.No.1216 of 2020 : Civil Miscellaneous Appeal filed



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under Section 173 of the Motor Vehicles Act, 1988, seeking to enhance the compensation amount awarded in the judgment and decree dated 02.01.2020 made in M.C.O.P.No.108 of 2018 on the file of the Motor Accidents Claims Tribunal/Special Sub Judge, Erode.

Prayer in C.M.A.No.1933 of 2020 : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order of the Motor Accidents Claims Tribunal cum Special Sub Judge, Erode made in M.C.O.P.No.108 of 2018 dated 02.01.2020 and allow this appeal.

C.M.A.No.1216 of 2020 :

For Appellant : M/s.M.Guruprasad

For Respondents : Notice dispensed with [R1 & R3]
Mr.S.Arunkumar [R2]

C.M.A.No.1933 of 2020 :

For Appellant : Mr.S.Arunkumar

For Respondents : M/s.M.Guruprasad [R1]
No appearance [R2 & R3]

COMMON JUDGEMENT

Both the claimant and the insurance company have filed appeals against the award passed by the Motor Accidents Claims Tribunal/Special Sub Judge, Erode in M.C.O.P.No.108 of 2018. The claimant has filed C.M.A.No.1216 of 2020 and the insurance company has filed



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C.M.A.No.1933 of 2020. For brevity, the appellant in C.M.A.No.1216 of 2020 is hereinafter referred to as claimant and the appellant in C.M.A.No.1933 of 2020 is hereinafter referred to as insurance company.

2. As per the claim petition, on 25.07.2017 at about 7.00 p.m., when the claimant was riding his motorcycle bearing Regn.No.TN-59-BE-7256 in Madurai to Kanjarampettai road, the car bearing Regn.No.TN-58-C-9724, which was owned by the first respondent and insured with second respondent, driven by the third respondent in a rash and negligent manner and dashed against the claimant, thereby the claimant had sustained grievous injuries all over his body. Therefore, the claimant filed a claim petition claiming a sum of Rs.21,00,000/- as compensation for the injuries sustained by him in the road accident.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked 18 documents viz., Ex.P.1 to Ex.P.18. No witnesses were examined nor any documents were marked on the side of the respondents. The Tribunal has marked the disability certificate of the claimant as Ex.C.1. After adjudication, the Tribunal passed an award awarding a sum



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of Rs.8,60,000/- as compensation. Challenging the same, both the claimant and the insurance company are before this Court.

4. The learned counsel appearing on behalf of the claimant submitted that, the Tribunal has rightly held that the claimant had suffered functional disability and awarded compensation by adopting multiplier method, by considering the injuries suffered by the claimant, which is wholly sustainable. Further, at the time of accident, though the claimant earned more than a sum of Rs.18,000/-, however, the Tribunal has fixed the monthly income at Rs.7,000/-, which is meagre and the same is liable to be enhanced. He further submitted that, the Tribunal not awarded any compensation towards loss of income during treatment period and the compensation awarded towards pain and suffering is meagre, which requires to be reconsidered. Accordingly, he prays for appropriate enhancement in favour of the claimant.

5. Per contra, the learned counsel appearing for the insurance company submitted that, as per Ex.C.1, 50% temporary disability was



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assessed by the medical board. He also submitted that, the claimant was supplying panipuri to shops and he has not established before the Tribunal that he was not able to continue his avocation after the accident. In the absence of any proof, the Tribunal has awarded compensation by adopting multiplier method, without following the guidelines issued by the Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, which is wholly unsustainable and the compensation awarded by the Tribunal under the other heads are excessive, which requires interference. Accordingly, he prays for allowing the appeal filed by the insurance company and dismissal of the appeal filed by the claimant.

6. Heard the learned counsel appearing on behalf of the claimant as well as the insurance company and also perused the materials available on record.

7. There is no quarrel that the claimant had suffered the injuries as a result of the accident, in which the car/offending vehicle was involved, which has been insured with the insurance company. The Tribunal,



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considering the materials placed before it has rightly come to the conclusion that it was due to the rash and negligent driving of the driver of the offending vehicle, the accident had happened and therefore, it is the duty of the insurance company as insurer of the offending vehicle to compensate the claimant. Therefore, on that point, no interference is warranted and the finding recorded by the Tribunal is confirmed.

8. Now, coming to the question of quantum of compensation awarded by the Tribunal, this Court perused Ex.C.1, the disability certificate issued by the medical board, in which the medical board assessed the disability at 50% permanent disability. However, the Tribunal on its own held that the claimant has suffered 50% functional disability and awarded compensation towards permanent disability & loss of earning power by erroneously adopting multiplier method, which is wholly unsustainable and hence, the same is liable to be interfered with. Therefore, taking a sum of Rs.5,000/- per percentage of disability and fixing the disability sustained by the claimant at 50%, the disability & loss of earning power is reassessed on percentage basis i.e., $\text{Rs.5,000/-} \times 50 = \text{Rs.2,50,000/-}$ and, accordingly, disability & loss of earning power is



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reduced from Rs.8,60,000/- to a sum of Rs.2,50,000/-.

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9. Taking into account the fact that the claimant has taken treatment in the hospital for more than one month, this Court awards a sum of Rs.60,000/- (10,000/- x 6) towards loss of earnings by fixing a sum of Rs.10,000/- as monthly income. Further, this Court is of the view that the compensation awarded by the Tribunal under the other heads, viz., transport to hospital, extra nourishment, attender charges, future medical expenses, damages to clothing and articles, medical expenses and pain and sufferings are just and reasonable and the same are confirmed.

10. In view of the above, the compensation awarded by the Tribunal is modified as under :

<i>S. No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of earnings	Nil	60,000/-



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<i>S. No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
2	Transport to Hospital	12,000/-	12,000/-
3	Extra nourishment	8,000/-	8,000/-
4	Attender Charges	8,000/-	8,000/-
5	Future Medical Expenses	Nil	Nil
6	Damages for Clothes and Articles	2,000/-	2,000/-
7	Medical Expenses	2,000/-	2,000/-
8	Pain and sufferings	70,000/-	70,000/-
9	Disability & Loss of Earning Power	7,56,000/-	2,50,000/- (reduced)
	Total	8,60,000/-	4,12,000/-

11. Accordingly, the impugned award of the Tribunal is modified, reducing the compensation amount from **Rs.8,60,000/-** to **Rs.4,12,000/-**. The Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.108 of 2018 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 four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant through RTGS within a period of two (2) weeks thereafter.



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12. In the result, the appeal in C.M.A.No.1216 of 2020 is disposed of and the appeal in C.M.A.No.1933 of 2020 is allowed. No costs. 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 Sub Judge, Erode.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

sp

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