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C.M.A.No.1105 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

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

C.M.A.No.1105 of 2020

and

CMP.No.6961 of 2020

The Divisional Manager,
United India Insurance Co. Ltd.,
AKM Towers, First Floor,
397-1, Junction Main Road,
Salem District.

...Appellant

Vs.

1. C.Arunachalam

2. T.Arunachalam

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree passed in M.C.O.P.No.271 of 2013 on 20.09.2018 on the file of the Motor Accident Claims Tribunal, Sub Judge at Sangagiri.

For Appellant : Mr.J.Chandran

For Respondents : Mr.C.Thangaraju, for R1
Mr.M.Purushothaman, for R2



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JUDGEMENT

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Challenging the judgment and decree dated 20.09.2018 made in M.C.O.P.No.271 of 2013 on the file of the Motor Accident Claims Tribunal, Sub Judge at Sangagiri, the insurance company is before this Court.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming a compensation of Rs.25,00,000/- on the ground that, on 09.01.2013 at about 20.30 hours, when the 1st respondent was travelling as a pillion rider in the TVS STAR CITY Motor Cycle bearing Regn.No.TN-34-L-0650, driven by its driver one Sankar, an Ashok Leyland Heavy goods Lorry bearing Regn.No.TN-30-2550, owned by the 2nd respondent, insured with the appellant insurance company, driver by its driver in a rash and negligent manner, dashed against the above said TVS Motor Cycle, as a result of which, the 1st respondent sustained grievous head injury and multiple injuries all over his body. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.10,55,000/-. Aggrieved with the said order, the present appeal has been filed by the appellant/insurance company questioning the liability of the insurer.



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3. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the TVS STAR CITY Motor Cycle, in which the 1st respondent travelled. Further, though the Doctor assessed the disability suffered by the 1st respondent at the rate of 30%, however, tribunal awarded compensation by adopting multiplier method, as if the 1st respondent sustained functional disability, which is perverse and unreasonable and the same is contrary to the various decisions rendered by the Hon'ble Apex Court as well as this Court, since the 1st respondent is continuing in his avocation, which he was performing before the accident. Further, the tribunal had awarded a sum of Rs.25,000/- under the head “Simple Injury” separately, which cannot be acceded to. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 1st respondent submitted that, after examining the disability suffered by the 1st respondent due to the above said accident, the Doctor, who was examined as PW.2 issued a Disability Certificate, marked as Ex.P.25, assessing the disability at the rate of 30% and after considering all the above said facts and after considering all the



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relevant documents, the Tribunal has rightly awarded the compensation, which does not require any modification. Accordingly, he prayed for dismissal of the appeal.

5. On the above said contentions, heard learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the Appellant/Insurance company is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the PW.2, Doctor assessed a disability of 30%, the tribunal had adopted the multiplier method as if the 1st respondent suffered Functional disability and awarded a sum of Rs.8,31,000/- under the head “Loss of Earning Capacity”.

7. It is seen from the records that, the tribunal awarded a sum of Rs.8,31,000/- under the head “Loss of Earning Capacity”, by adopting the



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multiplier method, however, a perusal of the records, particularly the impugned judgment makes it clear that, the 1st respondent was employed as Road Inspector in the Highways Department at the time of accident and no oral or documentary evidence was submitted by the 1st respondent to show that he was discontinued from his job and only if the 1st respondent is not able to perform his avocation which he was carrying on before the accident, then the Tribunal can very well adopt the multiplier method for awarding compensation. In the absence of any proof, a compensation of Rs.8,31,000/- awarded by the tribunal under the head “Loss of Earning Capacity” is wholly perverse and not sustainable and the same requires to be interfered with. Similarly, a sum of Rs.25,000/- has been awarded under the head Simple injury, which is not permissible and the same also has to be interfered with.

8. It is to be pointed out that the percentage of disability varies from doctor to doctor. Hence, considering the deposition made by the PW2, Doctor who examined the 1st respondent, the Ex.P.25, the Disability certificates and also taking into account the nature of injuries suffered by the 1st respondent, this Court fixes the disability sustained by the 1st respondent at the rate of 25%



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and fixes a sum of Rs.4,000/- per percentage of disability. Therefore, the amount under the head of “Loss of Earning capacity” stands modified to a sum of Rs.1,00,000/- (25% x Rs.4,000/- = Rs.1,00,000/-).

9. Insofar as the negligence fixed by the Tribunal is concerned, since the driver of the TVS Motor cycle in which the 1st respondent was travelling at the time of the accident, did not produce his driving license before the tribunal, the Tribunal had rightly arrived a conclusion that the driver of the TVS motor cycle did not possess a valid license and thereby, fixed 10% negligence for not holding valid driving license and 90% negligence on the part of the driver of the 2nd respondent vehicle, in which this Court does not find any fault with and is not inclined to interfere with the same.

10. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation are just and reasonable and the same does not warrant any interference of this Court.



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

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Earning capacity	8,31,000/-	1,00,000/-
Medical expenses	2,16,000/-	2,16,000/-
Pain and suffering	50,000/-	50,000/-
Transportation Expenses	20,000/-	20,000/-
Nutrition food	15,000/-	15,000/-
Attender charges	15,000/-	15,000/-
Simple Injury	25,000/-	-
Total	11,72,000/-	4,16,000/-

12. After reducing 10% for the negligence fixed on the part of the driver of the TVS STAR CITY motor cycle from the arrived compensation i.e., Rs.4,16,000/-, the compensation payable to the 1st respondent by the appellant comes to **Rs.3,74,400/-**.

13. Accordingly, the appeal is allowed and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.10,55,000/-**



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to **Rs.3,74,400/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No. 271 of 2013 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 said amount directly to the bank account of the 1st respondent through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance company, they are entitled to withdraw the same by way of filing necessary application. No costs. Consequently, the connected Miscellaneous petition is closed.

29.11.2023

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To



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1.The Motor Accident Claims Tribunal, Sub Judge
Sangagiri.

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



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M.DHANDAPANI, J.

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