IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

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

C.M.A.No.2457 of 2019
and
CMP.No.11302 of 2019

The Manager-Claims, Tata AIG General Insurance Co. Ltd.,
15th Floor, Tower A, Peninsula Business Park,
Ganpatrao Kadam Marg, Off Senapati Bapat Marg,
Lower Parel, Mumbai – 400 013.
C/o. The Branch Manager, TATA AIG General Insurance Co. Ltd.,
Samson Towers, 2nd Floor, No-403-L, Pantheon Road,
Egmore, Chennai – 08. ...Appellant

Vs.

1. Rajesh
2. M.K.Karthikeyan ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and judgment dated 05.12.2018 made in M.C.O.P.No.162 of 2016 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Hosur.

For Appellant : Mr.K.Vinod

For Respondents : Mr.Mukund R.Pandian, for R1
Notice dispensed with, for R2

JUDGEMENT

Challenging the judgment and decree dated 05.12.2018 passed in MCOP.No.162 of 2016 on the file of the Motor Accidents Claims Tribunal (Additional District Court), Hosur, the insurance company is before this Court.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming a sum of Rs.30,00,000/- on the ground that, on 09.12.2014 at about 1.00 a.m., when he was returning to Hosur after delivering the goods at Bagalur, by driving his Eicher Goods Vehicle bearing Regn.No.TN-37-T-2810, a Ashok Leyland Heavy Goods vehicle bearing Regn.No.KA-01-D-8321, owned by the 2nd respondent, insured with the appellant insurance company, driven by its driver in a rash and negligent manner, overtook the 1st respondent vehicle, without any signal and abruptly and thereby the 1st respondent hit the goods at rear side, despite applying brakes as he could not control the vehicle, and as a result, the 1st respondent sustained grievous injuries and got admitted in the hospital. After contest, the Tribunal, vide impugned decree awarded a compensation of Rs.19,51,955/-. Aggrieved with

the said order, the present appeal has been filed by the insurance company.

3. Learned counsel appearing for the appellant submitted that, for the above said accident, the FIR was registered as against the 1st respondent, since the said accident happened solely due to the negligence on the part of the 1st respondent. Further, at the time of accident, the 1st respondent was not in possession of valid licence and also the said Eicher vehicle was not having any insurance coverage for the relevant period. However, without considering the above said facts, the tribunal fixed 90% negligence on the part of the driver of the appellant insured vehicle and fastened the liability as against the appellant, which is *per se* illegal. Further, though the Medical board assessed only a partial permanent disability of 50%, the tribunal had applied multiplier method and awarded a sum of Rs11,52,000/- under the head "Earning capacity" and also awarded a sum of Rs.4,60,000/- under the head "Future prospects", which is not sustainable and the same is contrary to the decision rendered by the Hon'ble Apex Court in the case of ***Raj Kumar vs. Ajay Kumar*** reported in ***2011 (1) SCC 343*** and the compensation awarded under other heads are also very high and the same has to necessarily be interfered with. Accordingly, he

prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 1st respondent submitted though, it is the major contention of the appellant/insurance company that, the above said accident happened solely due to the negligence on the part of the 1st respondent and only thereby, the FIR was registered as against him, however, mere filing of the FIR as against the 1st respondent will not hold that the 1st respondent is wholly liable, as the FIR is not an encyclopedia and is not a conclusive proof. Further, that at the time of accident, the deceased was aged about only 33 years and being a driver by profession, he was unable to perform his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Hence, the tribunal, after taking into consideration all the above said facts and after carefully perusing the documents placed before it, passed the impugned award fixing a compensation of Rs.19,51,955/-, payable by the appellant/insurance company to the 1st respondent, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant as well as the 1st and 2nd

respondents and perused the materials available on record.

6. It is claimed by the appellant/insurance company that even a bare perusal of the Ex.P1 - FIR makes it clear that the above said accident happened due to the negligence on the part of the 1st respondent. However, in order to prove the same, except RW1, no independent witness has been examined by the appellant and no documents were placed before the tribunal. Hence, in the absence of any contra evidence, the Tribunal had rightly fixed 10% negligence on the part of the 1st respondent and 90% on the part of the appellant vehicle, in which, this Court does not find any fault and accordingly, the finding on negligence ordered by the Tribunal is confirmed.

7. Insofar as the disability suffered by the 1st respondent is concerned, as rightly pointed out by the learned counsel for the appellant, though the 1st respondent suffered only partial permanent disability of 50%, due to the above said accident, which is evident from the Ex.P16-Disability Certificate issued by the Medical Board, the Tribunal, had awarded a sum of Rs.11,52,000/- under the head "50% Earning capacity" by adopting the Multiplier method and further awarded a sum of Rs.4,60,000/- under the head "Future prospects",

which cannot be sustained. Even the 1st respondent/claimant has neither examined any witness nor submitted sufficient document to show that he suffered functional disability due to the above said accident and he is unable to continue his avocation, which he was carrying on before the accident and due to which, his earning capacity got reduced and in the absence of any solid proof, adoption of multiplier method by the tribunal is erroneous and definitely the same deserves interference.

8. In view of the above, this Court is inclined to award compensation by adopting percentage method. Accordingly, taking into consideration the fact that the accident had happened in the year 2014, a sum of Rs.4000 can be fixed per percentage of disability and, accordingly, the loss of Earning capacity of the 1st respondent is fixed as Rs.2,00,000/- (50% * 4000=2,00,000). In view of adoption of percentage method for granting compensation, the compensation awarded under the head "Future Prospects" is wholly erroneous and, accordingly, the said compensation is set aside.

9. In the above circumstances, 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.)
50% earning capacity	**11,52,000/-**	**2,00,000/-**
Transportation charges	**15,000/-**	**15,000/-**
Nutrition charges	**15,000/-**	**15,000/-**
Attender charges	**10,000/-**	10,000/-
Pain and sufferings	**75,000/-**	**75,000/-**
Discomfort, frustration and loss of social enjoyment	**25,000/-**	**25,000/-**
Medical Bills	**3,66,039/-**	**3,66,039/-**
Future Medical Expenses	**50,000/-**	**50,000/-**
Future Prospects	**4,60,800/-**	**-**
Total	**21,68,839/-**	**7,56,039/-**

10. After reducing 10% for the negligence fixed on the part of the 1st respondent from the arrived compensation i.e.,**7,56,039/-**, the compensation payable to the 1st respondent by the appellant comes to **Rs.6,80,435/- .**

11. The appeal is partly allowed and the impugned Award of the

Tribunal is modified by reducing the compensation amount from **Rs.19,51,955/-** to **Rs.6,80,435/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.162 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, 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. Any amount, in excess of the award ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

19.12.2023

skt

Index : Yes / No

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

To

1.The Motor Accidents Claims Tribunal (Additional District Court),
Hosur.

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

M.DHANDAPANI, J.

skt

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