



C.M.A.No.239 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.239 of 2021

and

C.M.P.No.1537 of 2021

The Branch Manager,
Reliance General Ins. Co. Ltd.,
3rd floor, 408, Sakthi Super Market,
Perundurai road,
Erode.

.. Appellant

Vs.

1.N.Rajendran

2.Herculean Gautham

3.S.Senthil Kumar

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.11.2019 made in M.C.O.P.No.129 of 2016 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Appellant : Ms.C.Bhuvanasundari

For R1 : No appearance



J U D G M E N T

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Aggrieved by the award of the Tribunal in respect of negligence as well as quantum, the Insurance Company has preferred this Civil Miscellaneous Appeal against the judgment and decree passed in M.C.O.P.No.129 of 2016 dated 13.11.2019 by the Motor Accidents Claims Tribunal / Sub Court, Perundurai.

2.The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.25,00,000/- for the injuries sustained by him in the accident that occurred on 30.01.2016.

3.The Tribunal on hearing both sides arguments and upon consideration of oral and documentary evidence, has granted compensation for a sum of Rs.13,84,448/- with 7.5% interest per annum from the date of petition till the date of deposit.

4.Despite the receipt of notice, the 1st respondent / sole claimant has neither appeared in person nor chosen to be represented through counsel.



5.The learned counsel for appellant – Insurance Company would strenuously contend that for the injuries and fractures suffered by the claimant, the Tribunal has granted compensation both on percentage method as well as by adopting multiplier method, which is totally unwarranted. Considering the fractures suffered by the claimant, he is only entitled to amount computed on percentage method. She would further state that the amounts awarded under other heads are reasonable and needs no interference and prayed for reducing the compensation.

6.Heard the learned counsel for the appellant and perused the entire materials on record.

7.It is the evidence of P.W.1 / injured claimant that on 30.01.2016 at about 04.30 P.M., while he was driving the auto bearing Registration No.TN 56 B 4793 with passengers along the Perundurai R.S. Canal road near Kongu Engineering College, Gate No.I, was proceeding towards north, a Honda Brio car bearing Registration No.TN 37 CC 9621, came in a rash and negligent manner and at a great speed, dashed against the auto. Due to the impact, he was thrown out from the auto and sustained very serious injuries and due to



the rash and negligent driving of the driver of the above said car is solely responsible for the accident, is not in dispute.

8.The claimant was stated to be an Auto Driver, earning a sum of Rs.25,000/- per month. It is the evidence of P.W.1 that on account of the accident, he suffered fracture of right pubic ramus, fracture of D1 and sustained liver laceration. As per Ex.P4 / wound certificate of Covai Medical Centre, Erode, he was in hospitalization from 30.01.2016 to 19.02.2016. It could be seen from Ex.P10 / discharge summary of Covai Medical Centre that the claimant herein sustained head injury, fracture of left temporal bone with underlying hematoma, fracture – right greater trochanteric, fracture transverse process of D1 vertebra, Grade-II liver laceration and fracture of right 3rd and 4th ribs. The said discharge summary is enclosed with the details of follow up, CT, brain reports taken on various dates. It is also relevant to observe the treatment given to the injured, MRI brain was done – DAI (Diffusal Axonal Injury), Grade-II liver laceration. He was treated conservatively for the pubic ramus fracture and fracture greater trochanteric. After 19 days, the CT brain (plain) done and showed resolving conditions.



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9.It is pertinent to note that the Doctor who treated the injured has been examined as P.W.3 (Doctor John Gurupatham of Covai Medical Centre, Erode). The disability certificate issued by the Medical Board is Ex.C1, which reflects the fact that disability was assessed as 50%. Therefore, the crucial question is whether for the purpose of granting compensation for disability, whether a lumpsum to be granted based on the disability suffered or multiplier method invoked by the Tribunal is acceptable to be seen.

10.The Hon'ble Supreme Court has observed as to how the disability details to be appreciated in *Rajkumar Vs. Ajaykumar* reported in [2011 (1) **SCC 343**], wherein it has been stated that the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

- (i)Whether the disablement is permanent or temporary;
- (ii)If the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;
- (iii)If the disablement percentage is expressed with reference to any



specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person.

11.It is relevant to note the observations made by the Hon'ble Apex Court in *Arvind Kumar Mishra Vs. New India Assurance Company Limited and another* reported in *[(2010) 10 SCC 254]*. It has been observed that we do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was in so far as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered.

11(i).In *Kerala SRTC Vs. Susamma Thomas*, the Hon'ble Supreme Court laid down the following principles which are extracted hereunder:



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“... 13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.”

12.It is relevant to extract the observations made by the Hon'ble Supreme Court in ***Yadava Kumar Vs. Divisional Manager, National Insurance Company Limited and another***, reported in ***[(2010) 10 SCC 341]***. It has been held that The High Court and the Tribunal must realize that there is a distinction between compensation and damage. The expression compensation may include a claim for damage but compensation is more comprehensive. Normally damages are given for an injury which is suffered, whereas compensation stands on a slightly higher footing. It is given for the atonement of injury caused and the intention behind grant of compensation is



to put back the injured party as far as possible in the same position, as if the injury has not taken place, by way of grant of pecuniary relief. Thus, in the matter of computation of compensation, the approach will be slightly more broad based than what is done in the matter of assessment of damages. At the same time it is true that there cannot be any rigid or mathematical precision in the matter of determination of compensation.

13.If the Tribunal concludes that there is permanent disability, then it will proceed to certain extent. If the Tribunal ascertains the actual extent of permanent disability of the claimant, based on the Medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

14.As regards the injuries and fractures sustained by the claimant has elaborately been discussed as mentioned supra, the claimant who was aged about 35 years, happened to be an Auto Driver, had suffered right 3, 4, 5 ribs fracture and hip fracture apart from punctured wound in the liver. Of course, the disability suffered is a partial permanent disability. On perusal of the disability certificate issued by the Medical Board, it was not assessed with



reference to a limb and it was assessed for the whole body. There cannot be any second opinion that the claimant could carry out his regular activities and work difficulties on account of the partial permanent disability he suffers. As an Auto Driver, with the above said fractures, especially head injury and other fractures over hip, certainly he would find difficulties in sitting for long hours. In spite of the above said partial permanent disability, though the claimant could carry on his activities and functions, he may not be in a position to effectively do the same as he done before. In the process of arriving at a just and fair compensation, this Court deems fit to invoke multiplier method for granting compensation for the disability suffered. For the purpose of calculation, disability assessed is taken at 20%. The income of the claimant is fixed at Rs.11,000/- per month taking into consideration the date of accident, age and avocation.

15.As per the law laid down by the Hon'ble Supreme Court in ***Tmt.Sarla Verma & others Vs. Delhi Transport Corporation & another***, reported in ***[2009 (2) TNMAC 1 SC Supreme Court]***, the corresponding multiplier is '16'. For the purpose of loss suffered on account of the disability, the following formula emerges.



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$$\text{Rs.11,000/-} \times 12 \times 16 \times 20/100 = \text{Rs.4,22,400/-}$$

16.The Tribunal has granted amounts by calculating on percentage method and by invoking multiplier method. As the amounts is calculated by invoking multiplier method, the amount granted by calculating by percentage method is hereby set aside.

17.With regard to attendant charges a sum of Rs.20,000/- and for loss of amenities, a sum of Rs.30,000/- is granted. As regards transportation is concerned, the amount awarded by the Tribunal appears to be on the lower side and hence, a sum of Rs.5,000/- is granted in addition to the amount already granted by the Tribunal for transportation.

18.As regards the other heads, the amounts awarded by the Tribunal appears to be reasonable and hence needs no interference.

19.Thus, the compensation awarded by the Tribunal is modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	10,08,000/-	4,22,400/-	Reduced
2.	For disability	1,50,000/-	-	Set aside
3.	Extra nourishment	10,000/-	10,000/-	Confirmed
4.	Attendant charges	-	20,000/-	Granted
5.	Pain and sufferings	25,000/-	25,000/-	Confirmed
6.	Medical expenses	1,81,448/-	1,81,448/-	Confirmed
7.	Transportation	10,000/-	15,000/-	Enhanced
8.	Loss of amenities	-	30,000/-	Granted
	Total	Rs.13,84,448/-	Rs.7,03,848/- Rounded off to Rs.7,04,000/-	Reduced by Rs.6,80,448/-

20. In the result,

20(i). This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,84,448/- is hereby reduced to Rs.7,04,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

20(ii). The appellant-Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.129 of 2016 on the file of the Motor Accidents Claims Tribunal,



Sub Court, Perundurai.

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20(iii).On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by filing necessary cheque application before the Tribunal.

20(iv).The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.129 of 2016, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

30.06.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai.

2.The Section Officer,
VR Section,
High Court,
Madras.



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R.KALAIMATHI, J.

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