



C.M.A.No.3079 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

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

C.M.A.No.3079 of 2019

and

CMP.No.16966 of 2019

M/s. Cholamandalam MS General Insurance Co. Ltd.,
Rep. By its Branch Manager,
No.64, Pidamaneri Main Road, Sai Towers,
Near Stadium, Dharmapuri.

...Appellant

Vs.

1. Perumal

2. M.Thangavel

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree made in M.C.O.P.No.112 of 2017 dated 10.01.2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Mr.E.Rajadurai
for M/s. M.B.Gopalan Associates

For Respondents : Mr.C.Prabakaran, for R1
: Not ready notice, for R2



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JUDGEMENT

WEB COPY Aggrieved by the judgment and decree passed by the Motor Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri in M.C.O.P.No.112 of 2017 dated 10.01.2019, the insurer has come up with this Appeal.

2. The case of the Appellant is that, the 1st respondent/claimant filed a claim petition claiming a compensation of Rs.20,00,000/- on the ground that, on 10.01.2016 at about 17.00 hours, when the 1st respondent was standing with his TVS-50 Moped bearing Regn.No.TN-29-T-8443 in the edge of the Senkuttai to K.Eachambadi road opposite to Nagar Kovil bus stop, a pick-up van bearing Regn.No.TN-28-AB-6372, owned by the 2nd respondent insured with the appellant driven by its driver in a rash and negligent manner, dashed against the 1st respondent, as a result of which, the 1st respondent sustained grievous injuries all over his body. Thereby, the 1st respondent filed a claim petition claiming compensation at the hands of the 2nd respondent and the appellant for the injuries sustained by him and for the loss of earning suffered by him during the period when he was admitted in the hospital. After contest, the tribunal,



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vide impugned judgment awarded a compensation of Rs.8,47,000/-.

Aggrieved by the said order, the appellant has come up with this appeal questioning the liability of the insurer.

3. Learned counsel for the Appellant submitted that, though the Medical board, after assessing the 1st respondent, issued a disability certificate holding that the 1st respondent sustained 50% partial permanent disability, however, without considering the same, tribunal had adopted multiplier method, as if the claimant sustained permanent and functional disability and awarded a compensation of Rs.6,24,000/- under the head Loss of earning power, which is not sustainable. Further, the compensation awarded under other heads are also on higher side and the same has to necessarily be interfered with.

4. Per contra, the learned counsel appearing for the 1st respondent/claimant submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any modification. Accordingly, he prayed for dismissal of the appeal.



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5. Heard the learned counsel for the Appellant and the learned counsel appearing on behalf of the 1st 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 only grievance of the appellant/insurer is with regard to the quantum of compensation awarded. It is claimed by the Appellant that though the claimant sustained only a partial permanent disability of 50%, however, the tribunal had adopted multiplier method instead of percentage method, as if the claimant suffered functional disability and is unable to continue his avocation, which he was performing before the accident, which is wholly unsustainable.

7. A perusal of the impugned award reveals that, during the examination of the claimant, the tribunal itself noticed that the 1st respondent/claimant walked with great difficulty and with a limp and he could only give evidence by sitting in the chair and that, his right leg has fully damaged and disfigured and it is visible that, the claimant cannot



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carry out his day to day activities as before, let alone the work of the mason, which requires the claimant to carry heavy weight. Thereby, the tribunal, after careful consideration of all the said facts and also considering the fact that, at the time of accident, the 1st respondent was aged about 49 years and was working as a mason, held that the disability sustained by the 1st respondent is a functional disability and thereby adopted multiplier method and awarded compensation.

8. Though the learned counsel for the appellant claim that the disability sustained by the 1st respondent is not functional in nature and that the adoption of multiplier method instead of percentage method by the tribunal is erroneous, however, the said contention cannot be accepted for the reasons that the 1st respondent being a Mason by profession, the extent of the disability would really hamper the claimant from discharging his work. Therefore, considering the said fact that the Tribunal had adopted multiplier method and arrived at the compensation and the procedure adopted by the Tribunal cannot be found fault with and this Court in agreement with the adoption of multiplier method. Accordingly, the said compensation is confirmed.



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9. For the reasons aforesaid, this appeal stands dismissed and the impugned Award of the Tribunal is confirmed. The appellant-Insurance company is directed to deposit the compensation amount awarded by the tribunal to the credit of M.C.O.P.No.112 of 2017 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 said amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected Miscellaneous petition is closed.

08.11.2023

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Index	: Yes / No
Speaking order	: Yes / No
NCC	: Yes / No



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To

- 1.The Motor Accidents Claims Tribunal, Special Subordinate Court,
Krishnagiri.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.

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