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C.M.A. Nos. 2331 and 2708 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. Nos. 2331 and 2708 of 2021

and C.M.P. No.13080 of 2021

(a). C.M.A. No.2331 of 2021
and C.M.P. No.13080 of 2021

Reliance General Insurance Company Limited,
No.6, 6th Floor, Haddows Road,
Chennai - 600 006.

... Appellant / 2nd Respondent

Vs.

1. Ponnarasu

... Respondent / Petitioner

2. V. Poornima

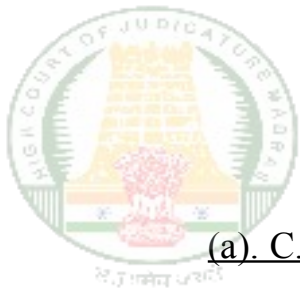
... Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 09.12.2020 made in M.C.O.P. No. 6775 of 2015 on the file of the VI Judge, Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr. P. Suresh Srinivasan

For R1 : Mr. K. Varadha Kamaraj

For R2 : No Appearance



C.M.A. Nos. 2331 and 2708 of 2021

(a). C.M.A. No.2708 of 2021

Ponnarasu

... Appellant / Petitioner

Vs.

1. V. Poornima

2. Reliance General Insurance Company
Limited,
No.6, 6th Floor, Haddows Road,
Chennai - 600 006.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 09.12.2020 made in M.C.O.P. No. 6775 of 2015 on the file of the VI Judge, Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant : Mr. K. Varadha Kamaraj
For R1 : No Appearance
For R2 : Mr. P. Suresh Srinivasan

JUDGMENT

These Civil Miscellaneous appeals have been arising out of the award in M.C.O.P. No. 6775 of 2015, dated 09.12.2020 on the file of the VI Judge, Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai. The C.M.A. No.2708 of 2021 filed by the claimant for enhancement of compensation and C.M.A. No.2331 of 2021 filed by the insurance company



questioning the quantum of compensation.

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2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. On 20.07.2015, at about 06:30 hours, the claimant was riding a motor cycle bearing Registration No.TN-05-AC-6198, proceeding East to West on the E.V.R. Road, Arumbakkam, Chennai, while he reached in front of Wafra Enterprises, a car bearing Registration No.TN-20-BJ-8727, belongs to the first respondent, driven by its driver in a rash and negligent manner came in the wrong side of the road and hit on the claimant's motorcycle, thereby causing grievous injuries to the claimant. A criminal case was registered in Cr.No.247/AS1/2015 U/s.277 and 338 of IPC on the file of Sub Inspector of Police, K4, Anna Nagar Traffic Investigation Police Station. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.30,00,000/- under section 166 of the Motor Vehicles Act, 1988.

4. The first and second respondents are the owner and the insurer



of the car bearing Registration no.TN-20-BJ-8727, respectively. The second respondent – insurance company has filed a counter and contended that the driver of the car has no valid driving licence at the time of occurrence and further contended that the accident has taken place only due to the rash and negligence on the part of the claimant, who has ridden the motorcycle in high speed and dashed against the car, thereby invited the accident, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.12 and Ex.C.1 – Medical Board Report of the claimant were marked. On the side of the respondents, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1 has held that the rash and negligence on the part of the driver of the car bearing Registration No.TN-20-BJ-8727 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.12,41,960/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part



of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant.

7. Aggrieved over the award, the insurance company has filed this appeal challenging the quantum of compensation awarded and the claimant has filed this appeal seeking enhancement of compensation.

8. The learned counsel for the claimant submitted that due to injury sustained in the shaft of femur, the claimant was not able to continue his previous avocation and his movements have been restricted, which also further affects his marriage prospectus. He also specifically stated that the Tribunal has not properly appreciated the evidence regarding his monthly income and fixed Rs.9,000/- as notional income, which is on the lower side and the compensation awarded under other heads are on the lower side, prays to enhance the compensation.

9. Per contra, the learned counsel appearing for the insurance company submitted that the compensation awarded under the various heads are on the higher side and more particularly, the Tribunal without any proper



evidence that the claimant has sustained functional disability has adopted multiplier method and awarded compensation under the head disability, hence prays to modify the award.

10. Heard the submissions made on both sides and perused the materials available on record:

11. Ex.P.2 – Accident Register, Ex.P.3, P.10 – discharge summaries issued by Pandian Advanced Medical Centre Pvt. Ltd., and Apollo Hospital, respectively and Ex.P.4 – Treatment Records shows that the claimant has sustained following injuries: “Fracture and crush injuries on the Right Leg and Thigh, laceration on the lateral part of right foot and laceration behind medial part of right leg, abrasion over left knee and multiple injuries all over the body”. The fracture and injuries have been treated by undergoing surgeries, first surgery of slab in flexion of knee was conducted on 22.09.2016 in Pandian Advanced Medical Centre Pvt. Ltd., and subsequently, the claimant was admitted in Apollo Hospital, where the second surgery of implanting plate and screws for fracture shaft of right femur was done on 03.08.2015. Ex.C.1 – Medical Board Report of the



claimant shows that the disability of the claimant is assessed 20% permanent disability.

12. The evidences clearly discussed supra reveals that the claimant has sustained grievous fracture and crush injuries on the right leg femur and has undergone multiple surgeries and he also taken treatment as an inpatient for 25 days. The Tribunal after appreciating the disability assessed by the Medical Board has held that the claimant has sustained functional disability and further held that he could not continue his earlier avocation, hence adopted multiplier method for granting compensation under the Functional Disability. Before the Tribunal, the claimant claimed that he was a Supervisor in TASMACH Bar and was earning Rs.15,000/- per month and marked the employment identity card issued to him. The claimant has not adduced any oral or documentary evidence to prove his monthly income. The Tribunal considering the age and avocation of the claimant has fixed the notional income of Rs.9,000/- per month for assessing his loss of earning capacity and granted **Rs.3,88,000/-** (Rs.9,000/- X 12 X 18 X 20% disability).

13. Hon'ble Apex Court in *Raj Kumar vs. Ajay Kumar [2011 ACJ 1]*, has held that for the injury cases, if the claimant has sustained



functional disability, which prevents him from carrying out his previous avocation, the disability assessed shall be treated as loss of earning capacity.

In this case, the claimant has sustained fracture on the shaft of the femur right leg and has undergone in-patient treatment for 25 days and also the other injuries in the leg shows that, he could not continue his supervising work, which requires continuous standing in the Liquor shop, and considering the disability as functional disability, the Tribunal has adopted multiplier method for granting compensation. This Court finds no infirmity in adopting multiplier method and notional income fixed by the Tribunal and hereby inclined to confirm the same.

14. The Tribunal has not awarded compensation under the head future prospectus, hence by considering the age of the claimant and as per the judgment of the Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 SSCR 299 : 2020 ACJ 2159]*** and ***Jagdish vs. Mohan and others [(2018) 4 SCC 571]***, the claimant is also entitled for future prospectus and this Court awards 40% as future prospectus on the loss of income due to his disability, hence this Court is inclined to grant the same as follows:



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Loss of income due to 20% disability = Rs.3,88,000/-

Future prospectus @ (40% of 3,88,000/-) = **Rs.1,55,200/-**

15. The Tribunal has awarded Rs.15,000/- under the head Pain and Suffering and Rs.10,000/- under the head loss of amenities, considering the age, nature of injuries and treatment period, this Court finds the compensation awarded under above heads are on the lower side, hence the same are modified as Rs.30,000/- towards pain and suffering and Rs.25,000/- towards loss of amenities. The compensation awarded under other heads are concerned, the Tribunal has awarded just compensation and the same are hereby confirmed. In view of the discussion made, the grievances raised by the respondent - Insurance Company that adoption of multiplier method by the Tribunal is not proper has no merits, hence the appeal filed by the insurance company is liable to be dismissed.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Functional Disability	3,88,800/-	3,88,800/-	Confirmed
2.	Pain and Suffering	15,000/-	30,000/-	Enhanced
3.	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation	10,000/-	10,000/-	Confirmed
5.	Damages to clothes	1,000/-	1,000/-	Confirmed
6.	Attender Charges	12,500/-	12,500/-	Confirmed
7.	Medical Bills	7,94,660/-	7,94,660/-	Confirmed
8.	Loss of Amenities	10,000/-	25,000/-	Enhanced
9.	Future Prospectus	---	1,55,200/-	Granted
	Total Compensation	12,41,960/-	14,27,160/-	Enhanced

17. In the result, the Civil Miscellaneous Appeal filed by the claimant is partly allowed and the compensation awarded by the Tribunal at Rs.12,41,960/- is hereby enhanced to **Rs.14,27,160/- [Rupees Fourteen Lakh Twenty Seven Thousand One Hundred and Sixty only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The Second Respondent – Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.6775 of 2015



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on the file of the VI Judge, Motor Accidents Claims Tribunal, VI Court of Small Causes, Chennai. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. The Civil Miscellaneous Appeal filed by the Insurance Company is dismissed. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs in present appeals.

13.12.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

K. RAJASEKAR, J.



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To:

1. The VI Judge,
Motor Accident Claims Tribunal,
VI Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

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