



C.M.A.No.2541 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2023

CORAM :

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

C.M.A.No.2541 of 2014

and

M.P.Nos.1 of 2014 & 1 of 2015 and C.M.P.No.10967 of 2017

The Branch Manager,
The New India Assurance Co. Ltd.,
Branch Office, No.40, Lakshmi Complex,
Opp. to Vani Vilas Hospital,
K.R. Road, Bangalore.

... Appellant

Vs.

1.M.Aswath @ Aswathappa
2.P.Thirupathi

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and Decree made in M.A.C.T.O.P.No.231 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Krishnagiri dated 01.01.2013.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.Mukund R. Pandian [R1]
Not Ready in Notice [R2]



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JUDGEMENT

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Questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Additional Subordinate Judge) at Krishnagiri in M.A.C.T.O.P.No.231 of 2010, dated 01.01.2013, the insurance company has filed the present appeal.

2. As per the claim petition, on 22.10.2007 at about 15.00 hours, the claimant was driving the Maruthi omni van bearing Regn.No.TSD-4190 from Hosur towards Anekkal and when the van was nearing Anthivadivillage Panchayat Union School, the tempo belonging to the first respondent and insured with the second respondent bearing Regn.No.KA10/1790 driven by its driver in a rash and negligent manner, dashed against the omni van, thereby the claimant sustained grievous injuries all over the body including fracture. Therefore, the claimant filed a claim petition claiming a sum of Rs.54,57,000/- which was restricted to a sum of Rs.15,00,000/-, for the injuries suffered by him in the road accident.

3. Before the Tribunal, the claimant examined himself as P.W.1



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and examined the doctor as P.W.2 and marked 8 documents viz., Ex.P.1 to Ex.P.8. On the side of the respondents, they have examined two witnesses viz., R.W.1 and R.W.2 and marked 3 documents viz., Ex.R.1 to Ex.R.3. After adjudication, the Tribunal by its award dated 11.01.2014 awarded compensation in a sum of Rs.9,94,124/- with an interest at the rate of 6% p.a. by ordering pay and recovery. Aggrieved by the same, the insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant/insurance company submitted that, in the absence of any proof towards the employment earnings, the compensation awarded by the Tribunal is erroneous. He further submitted that, the disability assessed by the doctor at 70% is in respect of whole body and not relatable to loss of earning power to the extent of 50% fixed by the Tribunal and therefore, he submitted that the compensation awarded is excessive. Equally, the compensation awarded under the various heads are on the higher side and the same deserves to be interfered with.

5. Per contra, the learned counsel appearing for the first



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respondent/claimant submitted that, by considering all the materials on records, the Tribunal has awarded compensation in favour of the claimant under various heads, which are just and reasonable and the same does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant as well as the first respondent and also perused the materials available on record.

7. There is no quarrel with the fact that the accident had happened due to the rash and negligent driving of the driver of the tempo, for which a finding has been rendered by the Tribunal. The said finding is not assailed by the appellant/insurance company. Therefore, this Court confirms the finding with regard to rash and negligent driving of the driver of the tempo.

8. The only issue is with regard to fixation of disability at 50% and adoption of multiplier method. In this regard, there is no dispute that the claimant was admitted in the hospital for the various grievous injuries and



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had taken treatment. Ex.P.8 is the disability certificate issued by the doctor/P.W.2 with regard to disability of the claimant, in which he has assessed the disability at 70% and the doctor deposed that the claimant has suffered fracture shaft or femur and left thigh for which fixed interlocking nailing by surgery and fracture proximal third right tibia, tibia bone fracture on his right leg thereby MIPPO Surgery was performed. Though it is claimed by the claimant that he was earning a sum of Rs.10,000/- per month by working as a driver, however, in order to prove the same, no documentary evidence has been produced before the Tribunal, thereby the Tribunal has fixed the monthly income of the claimant at Rs.5,000/-, which just and reasonable and this Court is not inclined to interfere with the same. The nature of the injuries suffered by the claimant as is evident from Ex.P.8, the doctor has stated that the claimant has suffered disability to the extent of 70%. The Tribunal, considering the evidence of P.W.2, the Tribunal had fixed the percentage of disability of the claimant at 50%. It is seen that except for the assessment of disability by an independent doctor, the opinion of the Medical Board had not been obtained with regard to the percentage of disability suffered by the claimant. Therefore, the assessment of disability



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at 50% is on the higher side. Naturally, to fix the disability, this Court has to refer the claimant to the Medical Board. However, considering the fact that the accident had happened in the year 2007 and almost a decade and a half had passed by now, it would not be in the interest of either parties as also in the interest of justice to refer the matter to the Medical Board. Therefore, to render substantial justice to either party, this Court is inclined to reduce the percentage of disability and fixes the same at 35%. Even according to the doctor/P.W.2, it is a functional disability, which would definitely hamper the claimant in earning his livelihood as has been earned by him prior to the accident. Therefore, necessarily his earning has to be offset by the appellant/insurance company to the extent to which he was earning before the accident. When the disability has been assessed as functional disability, which would have a negative effect in the earning of the claimant, the Tribunal has rightly adopted the multiplier method, which cannot be stated to be erroneous. Therefore, the compensation awarded towards loss of earning capacity is modified to a sum of Rs.3,57,000/- (5,000/- * 12 * 17 * 35%).

9. Though it is argued on behalf of the appellant/insurance



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company that the compensation under the various other heads are excessive, however, considering the nature of the injuries suffered by the claimant and the period of treatment and the impact which injuries have on the daily life of the claimant, the compensation awarded by the Tribunal under the various other heads cannot be said to be excessive and the same does not require any interference.

10. In view of the above, the compensation awarded by the Tribunal is modified as follows :

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of earning capacity	5,10,000/-	3,57,000/- (reduced)
2	Pain and Sufferings	50,000/-	50,000/-
3	Partial Loss of Income	30,000/-	30,000/-
4	Medical Expenses	3,44,124/-	3,44,124/-
5	Future Medical Expenses	30,000/-	30,000/-
6	Extra Nourishment	20,000/-	20,000/-
7	Transport to Hospital	10,000/-	10,000/-
	Total	9,94,124/-	8,41,124/-

11. Accordingly, the Civil Miscellaneous Appeal is partly allowed



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and the impugned award of the Tribunal is modified, reducing the amount from **Rs.9,94,124/-** to **Rs.8,41,124/-**. The appellant/insurance company is directed to deposit the said amount to the credit of M.C.O.P.No.231 of 2010 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 by the appellant/insurance company, the Tribunal is directed to transfer the said amount directly to the bank account of the first respondent/claimant through RTGS within a period of two (2) weeks thereafter. No costs. Consequently, the connected miscellaneous petitions are closed.

16.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

- 1.The Motor Accidents Claims Tribunal,
(Additional Subordinate Judge) at Krishnagiri.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.,

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