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C.M.A.No.4707 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.4707 of 2019

and

CMP.No.26740 of 2019

United India Insurance Co. Ltd.,
Having its Branch Office at:
No.5, Big Bazaar Street, Dharapuram,
Tiruppur District.

...Appellant

Vs.

1. D.Lakshmanan
2. Subramanian
3. United India Insurance Co. Ltd.,
Having its Divisional Office at:
No.1171, Muthiah Complex,
Mettur Road, Erode. (Given up)

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the award and decree passed in M.C.O.P.No.149 of 2018 dated 02.03.2019 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge), Erode.



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For Appellant : Mr.D.Bhaskaran

For Respondents : Ms.M.Amuthini, for R1
: Mr.R.Nalliappan, for R2
: No Appearance, for R3

JUDGMENT

This Civil Miscellaneous appeal has been filed challenging the award and decree passed in M.C.O.P.No.149 of 2018 dated 02.03.2019 on the file of the Motor Accident Claims Tribunal,(Special Subordinate Judge), Erode.

2. The case of the appellant is that, the 1st respondent filed a claim petition claiming a compensation of Rs.50,00,000/- on the ground that, on 26.02.2018 at about 11.30 am., when the 1st respondent was riding a TVS XL Super moped bearing Regn.No.TN-42-A-1496 along with one Thangaraj as pillion rider, the appellant insured car bearing Regn.No.TN-07-AW-0289 owned and driven by the 2nd respondent in a rash and negligent manner came in the opposite direction and dashed against the vehicle in which the claimant was travelling, as a result of which, the 1st respondent sustained grievous injuries all over his body and thereby, he filed a claim petition claiming compensation at the hands of the 2nd respondent and the appellant



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for injuries and loss of income sustained by him. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.24,24,800/-.

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

3. Learned counsel appearing for the appellant submitted that, it is evident from the disability certificate issued by the Medical Board as per the direction of this Court pursuant to the request of the appellant that, the 1st respondent had suffered only 25% partial permanent disability. While so, the tribunal had fixed the disability sustained by the 1st respondent at the rate of 60% and adopted multiplier method as if the claimant suffered functional disability and had awarded a compensation of Rs.17,26,200/- under the head “Disability and earning capacity” which is wholly unsustainable and the same has to necessarily be interfered with.

4. Per contra, the learned counsel appearing for the 1st respondent submitted that, the medical board consists of only Ortho specialist and no Neurosurgeon was available in order to assess the neurological disability



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sustained by the 1st respondent, which is not sustainable. However, the tribunal, by considering all the relevant documents placed before it had arrived at the conclusion that the 1st respondent sustained permanent and functional disability and thereby awarded compensation by adopting multiplier method, since due to the injuries sustained by the 1st respondent due to the accident, he is unable to continue his avocation, which he was carrying on before the accident, which cannot be said to be erroneous and the same does not warrants interference of this Court and accordingly, prayed for dismissal of this appeal.

5. On the above said contentions, heard learned counsel appearing for the 2nd respondent and perused the material documents placed 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/insurance company is with regard to the quantum of compensation awarded. A perusal of the disability certificate issued by the Government Erode Medical College Hospital, Perundurai reveals that the 1st



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respondent had sustained a disability of 25%, which is of partial and permanent in nature and even the Ex.P23, the Disability Certificate reveals that, the 1st respondent has sustained only a partial permanent disability of 76% and this document would clearly prove that the 1st respondent can resume his job after his treatment and that the said injury sustained by him would not have any impact on the job performed by the claimant as also his earning capacity.

7. However, the Tribunal, to assess the loss of earning capacity, had adopted multiplier method which is totally erroneous and the same is liable to be modified. Therefore, taking a sum of Rs.5,000/- per percentage of disability and fixing the disability sustained by the 1st respondent at 25%, the loss of earning due to disability is reassessed on percentage basis and accordingly, this Court awards a sum of Rs.1,50,000/- towards loss of earning capacity ($\text{Rs.5,000/-} \times 25 = 1,50,000/-$). Further, the Tribunal has awarded a sum of Rs.3,00,000/- towards compensation for pain and suffering, which is on the higher side and therefore, the said compensation awarded requires to be interfered.



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8. Similarly, though the 1st respondent had claimed that he is a mason by profession and was earning a sum of Rs.20,000/-, however, except the oral submission, no other documentary evidence has been submitted by the claimant to prove his monthly income. Hence, this Court fixes the monthly income of the 1st respondent as Rs.5,000/- and awards a compensation of Rs.15,000/- (for three months) under the head loss of income. Further, no compensation has been awarded under the head “attender charges” and therefore a sum of Rs.50,000/- shall be awarded under the said head.

9. Insofar as the negligence fixed by the tribunal is concerned, a perusal of the entire papers including the award passed by the Tribunal below would show that, the claimant had examined himself as P.W.1 and deposed that the accident had happened due to the rash and negligent driving of the driver of the appellant insured vehicle, however, in order to disprove the same, the insurance company has not examined any eye-witness to the occurrence. In the absence of any contra evidence to the submission of the 1st respondent, the Tribunal had arrived at a conclusion



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that as insurer of the offending vehicle, the insurance company is liable to compensate the claimant only to the extent of 85%, and the Tribunal had fixed 15% contributory negligence against the claimant, which is not sustainable and therefore, the findings of the Tribunal with regard to negligence is modified and this Court fixes the entire negligence on the part of the driver of the appellant insured vehicle and thereby fixes the entire liability as against the appellant.

10. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of income	13,700/-	15,000/- (enhanced)
Transportation	20,000/-	20,000/-
Extra-nourishment	84,000/-	84,000/-
Damage to clothing	500/-	500/-
Medical expenses	5,49,800/-	5,49,800/-
Pain and suffering	3,00,000/-	1,00,000/- (reduced)
Disability and loss of earning power	17,26,000/-	1,25,000/- (reduced)
Attender charges	-	50,000/-
Total	Rs.26,94,200/-	Rs.9,44,300/-

12. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.26,94,200/-** to **Rs.9,44,300/-**. The appellant/Insurance Company is directed to deposit the entire modified award amount as ordered by this Court to the credit of M.C.O.P.No.149 of 2018 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 weeks (4) from the date of receipt



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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. No costs. Consequently, the connected Miscellaneous petition is closed.

18.12.2023

skt

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

To:

1. The Motor Accidents Claims Tribunal, (Special Subordinate Judge), Erode.
2. The Section Officer,
V.R.Section, High Court, Madras.

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M.DHANDAPANI, J.

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