IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2023

C O R A M

THE HONOURABLE MRS.JUSTICE **N. MALA**

**C.M.A.No.1097 of 2020**
**&**
**CMP.No.6944 of 2020**

The Manager, Reliance General
Ins. Co. Ltd.,
1st Floor, Dhanam Towers,
No.1, P.N. Main Road, Park Road,
Tiruppur ...Appellant

Vs

1. Mr. M. Kumar
2. Mr. S. Mahendran ..Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree nd judgment daed 25.10.2018 passed in MCOP.No.2049 of 2015 by the Motor Accident Claims Tribunal, Sub Court, Tiruppur.s

For Appellant : Mrs.C.Bhuvana Sundari

For Respondents : Mr. Ma.P.Thangavel for R1

R2- No appearance.

**JUDGMENT**

This Civil Miscellaneous Appeal is preferred by the appellant Insurance Company against the award made in MCOP.No.2049 of 2015 on the file of the Motor Vehicles Accident Claims Tribunal, Principal Sub Judge (MCOP), Sub Court, Tiruppur, dated 25.10.2018 challenging the quantum of compensation awarded by the tribunal.

2. The facts leading to filing of this Civil Miscellaneous Appeal are as follows:

(a) On 01.08.2015, when the 1st respondent/claimant was riding his motor cycle bearing Regn.No.TN 36 H 3037 on P.N.Road, near Kanakkampalayam Pirivu, Tiruppur, another vehicle bearing Regn.No.TN 42 D 6521, driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against the claimant's vehicle, due to which, the claimant sustained fracture on his left leg and also other injuries.

(b) According to the claimant, he was a Mason and earning Rs.10,000/- per month.

(c) In the tribunal, the claimant examined 3 witnesses and marked exhibits Ex.P1 to Ex.P.7 in support of his case. On the side of respondent, RW1 was examined and exhibits viz., Ex.R.1 to Ex.R.3 were marked.

(d) The Tribunal, after analysing the evidence produced on both sides, awarded a compensation of Rs.12,70,000/- to be paid by the Insurance Company along with interest at the rate of 7.5% per annum.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the Insurance Company has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant Insurance Company submitted that though under Ex.P.6 - Disability Certificate, the disability was assessed at 48%, the tribunal ought to have independently assessed the functional disability before adopting the multiplier method for assessing the compensation towards disability.

5. He further submitted that the tribunal has erred in awarding future prospects at 40%, when the 1st respondent has not proved his

functional disability through medical records. The counsel submitted that the tribunal, though awarded Rs.25,000/- towards pain and sufferings, awarded additionally Rs.10,000/- towards mental agony. According to the counsel, the tribunal excessively awarded Rs.15,000/- towards loss of amenities, when 'loss of amenities' which arises out of 'disability' was suitably compensated.

6. It is the further contention of the counsel for the appellant that the tribunal has awarded Rs.20,000/- towards future medical expenses without any documentary evidence.

7. In support of his contentions, the counsel relied on the judgment of a Division Bench of this Court made in CMA.No.1898 of 2022 and Cr.Obj.No.99 of 2022, dated 02.11.2022, wherein, it was held as under;

> *“From the materials on record, it is seen that the Medical Board has not mentioned that due to the injuries, the 1st respondent suffered functional disability and lost his earning capacity. The Tribunal in the absence of any evidence with regard to functional disability or loss of earning capacity,*

*erroneously adopted multiplier method for awarding compensation towards loss of earning capacity. The 1st respondent is not entitled to compensation towards loss of earning capacity by adopting multiplier method and he is entitled to compensation only by adopting percentage method for 70% disability."*

8. The learned counsel for the 1st respondent, on the other hand, submitted that the tribunal failed to award compensation towards attendant charges and loss of income. He also submitted that as the 1st respondent was working as a mason and sustained fracture of his left femur bone, his functional disability may be assessed at 15% and multiplier method may be adopted accordingly.

9. In support of his contentions, he relied upon the following judgments ;

1. 2017 (3) Supreme Court Cases 351 (Sandeep Khanuja Vs. Atul Dande and another), wherein, the Honourable Apex Court has held as follows;

2. 2013 (1) TNMAC 573 (The Branch Manager, New India Assurance Co.Ltd.,), wherein, it has been held as follows;

3. 2011 (2) TNMAC 190 (SC) (Sriramachandrappa Vs. The Manager, Royal Sundaram Alliance Insurance Company Limited), wherein, it is held as follows;

10. Heard the learned counsel appearing for the appellant Insurance Company and the learned counsel appearing for the first respondent. No representation for the 2nd respondent.

11. In this appeal, negligence and liability are not disputed by the insurance company. The only issue to be decided in the appeal is the quantum of compensation payable to the 1st respondent/claimant.

12. It is seen that the 1st respondent sustained fracture of his left femur bone. He underwent a surgery for re-union of fractured femur bone by fixing a screw/plate. The Doctor, who examined the 1st respondent and issued the disability certificate Ex.P.6, was examined as PW3. From Ex.P.6, it is seen that the 1st respondent had sustained

48% disability due to the injuries sustained by him in the accident.

13. The tribunal on an assessment of the pleadings and evidence, assessed the disability at 48%, adopted the multiplier method and fixed the compensation at Rs.12,70,000/- along with interest at the rate of 7.5% interest per annum.

14. It is seen that the tribunal, while awarding compensation for disability merely relied on the evidence of PW3 and no where discussed the functional disability sustained by the 1st respondent. It is no doubt true that the 1st respondent was working as a Mason at the time of accident and that as a Mason, the fracture of the femur bone would have an impact on his earning power. Even PW3, the Doctor in his evidence, had stated that the 1st respondent would have difficulty in walking on inclined plane, climbing stairs, standing for long hours and also squatting on the floor. The tribunal, on the basis of the evidence of PW3, accepted the disability at 48%. In my view, the tribunal ought to have assessed the functional disability also. I am of the view that this is a fit case for adopting multiplier method as the claimant who was a Mason, sustained fracture of the femur bone and as such would definitely suffer functional

disability. Considering the nature of the injury and the impact of the same on the 1st respondent's avocation, as a mason, I am of the view that the functional disability can be assessed at 15%. In view of the above discussion, the compensation for disability is calculated as follows;

12,600 x 12 x 15x 15/100 = Rs.3,40,200/-

Since the tribunal has already awarded Rs.25,000/- towards pain and sufferings, the compensation awarded under the head 'mental agony' of Rs.10,000/- is set aside. Likewise, in the absence of any documentary evidence proving the requirement of future treatment, the award of Rs.20,000/- granted under the head 'future medical expenses' is also set aside. It is seen that the tribunal has not awarded any sum under the head 'loss of income', hence a sum of Rs.18,000/- (Rs.9,000/- monthly salary x 2) is hereby awarded as compensation under the said head. Apart from that, a sum of Rs.10,000/- is hereby awarded under the head 'Attendant charges' as the tribunal has not awarded any compensation under that head. As far as transportation charges is concerned, the compensation awarded by the tribunal is hereby enhanced from Rs.3,000/- to Rs.5,000/-.

15. Thus, the award of the tribunal is modified as follows;

| ***Heads*** | ***Compensation awarded by the tribunal*** | ***Compensation awarded by this Court*** |
|---|---|---|
| Disability | Rs.10,88,640/- (assessed at 15%) 12,600 x 12 x 16 x 48/100) | Rs.3,40,200/- (assessed at 15%) 12,600x12 x15x 15/100 |
| pain and sufferings | Rs. 25,000/- | Rs. 25,000/- |
| future medical expenses | Rs. 20,000/- | Nil |
| loss of income (Rs.9000 x 2 ) | Nil | Rs. 18,000/- |
| loss of amenities | Rs. 15,000/- | Rs. 15,000/- |
| mental agony | Rs. 10,000/- | Nil |
| attendant charges | Nil | Rs. 10,000/- |
| nutrition | Rs. 5,000/- | Rs. 15,000/- |
| transportation | Rs. 3,000/- | Rs. 5,000/- |
| Medical bills | Rs. 1,04,813/- | Rs. 1,04,813/- |
| Total | Rs. 12,71,453/- rounded off Rs.12,70,000/- | Rs. 5,23,013/- rounded off toRs,5,23,000 |

rounded off to Rs.5,23,000/-.

16. It is submitted by the learned counsel for the appellant that 50% of the award amount was already deposited. The appellant is directed to deposit the balance of the modified compensation awarded by

this court, after deducting the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

17. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

- The compensation awarded by the tribunal at Rs.12,70,000/- is modified to Rs.5,23,000/- along with interest at the rate of 7.5% per annum.

- The appellant insurance company shall deposit the modified compensation of Rs.5,23,000/-, less the amount, if any, already deposited before the tribunal along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

- On such deposit being made, the 1st respondent shall withdraw the same by making appropriate application before the tribunal.

12.04.2023

msr

Index: yes/no
Internet:yes/no

To

The Motor Accidents Claims Tribunal,
Court of Principal District and Sessions\
Judge, Chennai.

N. MALA, J.

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CMA.No.1097 of 2020 &
CMP.No.6944 of 2020

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