



C.M.A.No.16 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.16 of 2017

and

C.M.P.No.77 of 2017

The New India Assurance Co.Ltd.,

Kumaran Shopping Complex,

Kumaran Road, Tirupur.

... Appellant

Vs.

1.Prabakaran

2.Palanisamy

3.Unnamalai

... Respondents

(R2 & R3 were set ex-parte before Tribunal.

Hence, notice to R2 & R3 dispensed with)

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.1355 of 2013 on the file of the Motor Accidents Claims Tribunal II Additional District and Sessions Judge, Tirupur, dated 31.03.2016.



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For Appellant : Mr.M.Krishnamoorthy
R1 & R2 : Ex-party before the Tribunal
For R3 : Mr.Ma.P.Thangavel

J U D G M E N T

The Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1355 of 2013 on the file of the Motor Accidents Claims Tribunal Additional District and Sessions Judge-II, Tirupur, dated 31.03.2016, wherein, the Tribunal has awarded a sum of Rs.5,00,000/- as compensation for the injuries sustained by the claimant in the accident taken place on 12.08.2023.

2.The parties are referred to hereunder according to the status and ranking before the trial Court.

3.The case of the claimant is as follows:

On 12.08.2013 at about 7.30 p.m., the claimant was walking on the mud road near Vidyalam Kamalam Clinic from Palladam to Tirupur Road; at that time, a two wheeler bearing Registration No.TN 45 AM



6131 driven by its driver/1st respondent in a rash and negligent manner and dashed against the claimant and caused severe injuries on his both legs. Due to the impact, the claimant sustained injuries, therefore, the claimant has filed the claim petition claiming a sum of Rs.8,00,000/-as compensation.

4. The respondents 1 and 2 who are driver and owner of the two wheeler remained ex-parte before the Tribunal and third respondent/insurance company therein, contested the claim petition. The 3rd respondent insurance company questioned the liability before the Tribunal. Before the Tribunal, the claimant examined himself as P.W.1. and two other witnesses examined as P.W.2 and 3. Exs.P1 to P6 were marked on the side of the claimant. On the side of the 3rd respondent-Insurance Company, two witnesses were examined as R.W.1 and R.W.2 and Exs.P1 to P7 were marked.

5.After considering the evidence, the Tribunal has held that the rider of the two wheeler is responsible for the accident and he is the tortfeasor; as such answered Issue No.1. In respect of Issue No.2, held that the rider of the two wheeler was not having valid driving license; but



considering the fact that the injured was a third party, the Tribunal directed the 3rd respondent/ Insurance Company to pay and recover from the owner of the offending vehicle.

6. In respect of Issue No.3, the Tribunal has considered the evidence of P.W.3-Doctor, who issued disability certificate and fixed the disability as 35%. The Tribunal held that the disability has resulted in “loss of earning capacity” of the claimant and he could not continue his earlier avocation. Therefore, the Tribunal awarded Rs.4,03,200/- under the head “loss of earning capacity”.

7. Aggrieved over adopting multiplier method for granting compensation under the head “loss of earning capacity”, this appeal has been filed by the Insurance Company.

8. Learned counsel for the insurance company has submitted that the injury sustained by the claimant could not be considered as “permanent disability” and applying multiplier is not in accordance with law and same requires modification prays to adopt percentage method to grant compensation.



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9.Per contra, the learned counsel appearing on behalf of the claimant would contend that the injury sustained by the claimant has drastically reduced the regular physical movement of the claimant and also prevented him from doing his previous avocation i.e., (packing master, who is a manual labour). Hence, the Tribunal has rightly applied the multiplier method and prays to confirm the same.

10. The learned counsel for the claimant would rely on the decision of the Hon'ble Supreme Court in RajKumar Vs.Ajay Kumar reported in 2011 (1) SCC 343, wherein, the Hon'ble Supreme Court has given guidelines to the Tribunal with respect to the assessment towards “loss of future earning capacity” based on the disability suffered by the claimant.

11. I have considered the rival submissions on both sides and also perused the materials available on record.

12.It is seen that the claimant has suffered two fractures in his left leg-Tibia and Fibula and Rod was fixed which also resulted in disfigurement of the left leg. The claimant could not sit, walk and stand



and thereby, he is unable to continue his avocation. P.W.3-doctor assessed the disability as 40%. Even though, the claimant has not suffered any amputation, evidence of P.W.3-Doctor shows that, the claimant has suffered both bone fractures of his left leg. Nailing is done. Injury has also caused disfigurement, restricted the movement of left knee. He is not able to lift heavy objects and could not stand without support. This shows that, these injuries have changed his physiq. Considering the nature of the work, he was doing viz., packing master which requires manual labour, this Court is of the view that, the multiplier method adopted by the Tribunal is proper. However, percentage of “Loss of Earning Capacity” is on the higher side and it has to be assessed as 20%. Accordingly, this Court deems it fit to award as under :-

Permanent Disability at 20%

Loss of earning capacity is calculated as under:-

$[Rs.6000 \times 12 \times 16 \times 20\% / 100] = Rs.2,30,400/-$

13.As for as the quantum of compensation under other heads are concerned, this Court is not inclined to reduce the award with regard to the order of 'pay and recovery' passed by the Tribunal and the same is confirmed and the appeal is partly allowed.



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14. 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)	Amount confirmed or enhanced or granted or reduced
1	Loss of earning capacity	Rs.4,03,200/-	Rs.2,30,400/-	reduced
2	Pain and Suffering	Rs.30,000/-	Rs.30,000/-	confirmed
3	Extra-Nourishment	Rs.30,000/-	Rs.30,000/-	confirmed
4	Transport	Rs.5,000/-	Rs.5,000/-	confirmed
5	Attender Charges	Rs.15,000/-	Rs.15,000/-	confirmed
6	Medical Expenses	Rs.37,600/-	Rs.37,600/-	confirmed
	Total	Rs.5,20,800/-	Rs.3,48,000/-	Reduced by Rs.1,72,800/-

15. The Appellant/Insurance company is directed to pay the modified compensation amount of Rs.3,48,000/- along with interest at the rate of 7.5% from the date of petition till the date of deposit as



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compensation to the claimant and thereafter recover the same from the owner of the vehicle. On such deposit being made, the claimant is entitled to withdraw the same with accrued interest by making appropriate application before the Tribunal. The Civil Miscellaneous Appeal is party allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The learned II Additional District & Session Judge,
Motor Accidents Claims Tribunal,
Tirupur.

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.,

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