IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM :

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

C.M.A.No.3110 of 2017
and
C.M.P.No.18951 of 2017

United India Insurance Co. Ltd.,
having its branch office at
New No.768, Old No.1028,
United India Buildings, Avanashi Road,
Near Dinathanthi Office,
Coimbatore – 641 018. ... Appellant

Vs.

1. G.Anthony Irudayaraj
2. B.Abdul Hakeem ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 14.06.2017 made in M.C.O.P.No.190 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge), Erode)

For Appellant : Mr.D.Bhaskaran

For Respondents : No Appearance [R1]

Ex parte [R2]

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JUDGMENT

The above appeal is filed by the appellant against the Decree and Judgement dated 14.06.2017 in M.C.O.P.No.190 of 2016 on the file of Motor Accidents Claims Tribunal (Special Subordinate Judge), Erode).

2. Though the notice was served on the first respondent, however no one appeared on his behalf. Considering the period of pendency of this appeal, the same is disposed of based on the materials available on record.

3. It is the case of the claimant that, on 15.03.2016 at about 3:30 p.m. when the petitioner was standing at the extreme southern side of east-west Kovai to Avinashi road, near Anna Statue junction, at that time a motor cycle bearing Registration No.TN 37 CE 7070 driven by its driver / first respondent in a rash and negligent manner and hit against the petitioner who was standing in the extreme left side of the road, due to which the petitioner sustained bone fracture and grievous injuries all over his body. Claiming compensation for a sum of Rs.32,50,000/- the

claimant has filed a claim petition.

4. Before the Tribunal, the claimant had examined P.W.1 and P.W.2 and marked 23 documents viz., Ex.P.1 to Ex.P.23. On the side of the respondents, no documents were examined nor any exhibits were marked by them. After adjudication, the Tribunal awarded a sum of Rs.4,81,700/- as compensation to the claimant / first respondent. Aggrieved over the same, the appellant / insurance company has preferred the present appeal.

5. The learned counsel appearing for the appellant / insurance company submitted that, though it is clear from the disability certificate that the percentage of disability assessed by an independent doctor is 22% partial permanent disability which is not functional in nature, however, the same would not hamper the claimant from doing his day to day work. However, contrary to the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343,*** the Tribunal has fixed 20% functional disability under the head

"loss of earning capacity" by adopting multiplier method which is *per se* unsustainable. However, the compensation awarded under various other heads are highly excessive, which warrants interference.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. 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.

8. Admittedly, the first respondent had sustained multiple injuries. It is discernible from Ex.P.21, disability certificate that the independent Doctor assessed the disability at 22% partial permanent disability, however, the Tribunal erred in awarding compensation under the head Loss of earning capacity by fixing 20% functional disability as if the disability of the claimant is functional in nature by adopting the multiplier method which cannot be acceded to.

9. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the claimant, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore, this Court is inclined to adopt percentage method to arrive at the compensation to be given to the claimant.

10. However, considering the age and nature of injury sustained by the claimant and the extent of the disability would not really hamper the claimant from discharging his day to day, this Court fixes Rs.5000/- per percentage of disability. Therefore, the compensation awarded under the head "Loss of earning power" is modified to Rs.1,10,000/- (22% * 5000=1,10,000/-). It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble

Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company*** reported in ***2014 (1) TANMAC 459,*** fixing a notional income of Rs.15,000/-per month, therefore, the loss of income is modified to a sum of Rs.45,000/- (15,000 x 3 months). Further, the Tribunal had awarded Rs.3,000/- towards extra nourishment which is on the lower side and the same is enhanced to a sum of Rs.5,000/-; Rs.40,000/- towards pain and sufferings which is very meagre and the same is enhanced to a sum of Rs.50,000/-. No amount has been awarded under the head “attender charges” and this Court is inclined to fix a sum of Rs.3,000/- under the said head. Further the Tribunal ought to have adopted either multiplier method or percentage method under the heads loss of earning power and disability respectively, however, without doing so, it had adopted both the multiplier and percentage methods which is per se unsustainable. Hence, the compensation awarded under the head “disability” does not arise. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference. Hence, the compensation awarded under the head disability does not arise.

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

S.No.	***Description***	***Awarded by the Tribunal (Amount in Rs.)***	***Awarded by this Court (Amount in Rs.)***
1	Loss of Income (15,000 * 3)	**8,000/-**	**45,000/- (enhanced)**
2	Transport expenses	2,000/-	2,000/-
3	Extra nourishment	**3,000/-**	**5,000/- (enhanced)**
4	Damages for clothes and Articles	500/-	500/-
5	Medical Expenses	61,000/-	61,000/-
6	Pain and Sufferings	**40,000/-**	**50,000/- (enhanced)**
7	Disability	60,000/-	**-**
8	Loss of earning power	**3,07,200/-**	**1,10,000/- (reduced)**
9	Attender charges	-	**3,000/-**
	Total	**4,81,700/-**	**2,76,500/-**

12. Accordingly, this appeal is allowed in part and the compensation amount is reduced from Rs.4,81,700/- to Rs.2,76,500/- and the appellant / Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of

M.C.O.P.No.190 of 2016 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 six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

13.12.2023

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

1.Motor Accidents Claims Tribunal (Special Subordinate Judge), Erode)

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

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