



C.M.A.No.633 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.633 of 2020

and

C.M.P.No.3845 of 2020

Bajaj Allianz Insurance Company Ltd,
No.11, Peoples Park, 3rd Floor,
Government Arts College Road,
Coimbatore.

... Appellant

Vs.

1. K.Rajendran
2. S.Velmurugan
3. K.N.Subramanian
Respondents

...

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against award and decree dated 26.04.2019 made in M.C.O.P.No.287 of 2017 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruppur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Notice dispensed with [R2 &
R3]
Mr.K.Myilsamy [R1]



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JUDGMENT

The above appeal is filed by the appellant / insurance company challenging by the compensation awarded by the Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruppur in M.C.O.P.No.287 of 2017 dated 26.04.2019.

2. It is the case of the claimant that, on 06.01.2017 at about 7.00 p.m., when the claimant was riding his motor cycle bearing Regn.No.TN 42 A 3772, at that time the offending vehicle bearing Regn.No.TN 37 CL 4311 driven by the first respondent came in a rash and negligent manner and hit against the petitioner's vehicle, which resulted in the petitioner in sustaining grievous injuries. Claiming compensation in a sum of Rs.35,00,000/-, the claim petition has been filed by the claimant.

3. Before the Tribunal, the claimant had examined himself as P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.11. On the side of the respondents, they have examined R.W.1 and no documents were marked. After adjudication, the Tribunal awarded a sum of Rs.19,30,000/- as



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compensation to the claimant. Challenging the same, the appellant / insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant / insurance company submitted that, though it is clear from the disability certificate issued by the Medical Board that the percentage of disability assessed by an independent doctor is 70% partial permanent disability which is not functional in nature and 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 70% functional disability under the head “disability” by adopting multiplier method which is *per se* unsustainable. However, the compensation awarded under various other heads are highly excessive, which warrants interference.

5. The learned counsel appearing for the first respondent/claimant submitted that, considering the nature of injuries sustained by the



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claimant and all the relevant documents, the Tribunal has rightly fixed the disability at 70% and awarded a sum of Rs.16,93,440/- towards disability, which does not require any interference. Further, he submits that the other heads awarded by the Tribunal below is also just and reasonable. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. Admittedly, the first respondent had sustained multiple injuries. It is discernible from Ex.C.1, disability certificate issued by the Medical Board that the independent Doctor assessed the disability at 70% partial permanent disability, however, the Tribunal erred in awarding compensation under the head disability by fixing 70% functional disability as if the disability of the claimant is functional in nature by adopting the multiplier method which cannot be acceded to.

8. A perusal of the impugned award makes it clear that, the



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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.

9. 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 “disability” is modified to Rs.3,50,000/- ($70\% * 5000 = 3,50,000/-$). 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.

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



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S.No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Disability 12,600 x 12 x 16 x 70/100	16,93,440/-	3,50,000/- (reduced)
2	Pain and suffering	50,000/-	50,000/-
3	Future Medical Expenses	25,000/-	25,000/-
4	Loss of amenities	20,000/-	20,000/-
5	Mental agony	20,000/-	20,000/-
6	Nutrition	10,000/-	10,000/-
7	Attender charges & Transport	5,000/-	5,000/-
8	Medical Bills	1,08,629	1,08,629/-
	Total	19,32,069/-	5,88,629/-
	Total (Rounded off)	19,30,000/-	5,89,000/-

11. Accordingly, this appeal is allowed in part and the compensation amount is deducted from Rs.19,30,000/- to Rs.5,89,000/- 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.287 of 2017 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



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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.

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Index : Yes / No
Speaking order / Non-speaking order
Netru Citation Case : Yes / No
rap

To

- 1.Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruppur.
- 2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.



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