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C.M.A.No.2547 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.2547 of 2018 and
CMP No.19338 of 2018

M/s.Cholamandalam MS General
Insurance Company Limited
'Shanthi Gears Building'
III Floor, No.304-A,
Shanthi Gears Road,
Singanallur, Coimbatore

... Appellant

Vs.

1. R.Mahendrakumar

2. J.Arun

3. M/s.Elite Industries
A-46, SIDCO Industrial Estate
Kurichi,
Coimbatore – 641 021

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the decree and judgment dated 05.06.2017 passed in M.C.O.P.No.523 of 2014, by the Motor Accidents Claims Tribunal (Special Subordinate Judge), at Coimbatore.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.C.Veeraraghavan for R1
Mr.N.Krishna Kumar for
M/s.Sarvabhuman Associates for R3
R2- Notice sent, service awaited.



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the decree and judgment dated 05.06.2017 passed in M.C.O.P.No.523 of 2014, by the Motor Accidents Claims Tribunal (Special Subordinate Judge), at Coimbatore.

2. The 1st respondent is the claimant. The 2nd respondent is the driver, 3rd respondent is the owner and the appellant is the insurer of the offending Jeep bearing Regn. No.TN-37-BX-1141 and they were arrayed as respondents 1 to 3 before the Tribunal.

3. The case of the claimant is that on 07.02.2014 at about 11.00 a.m., the claimant was riding his motor-cycle bearing Regn. No.TN-37-BL-2437 very slowly at the 2nd junction, Vivekanandar Street, Ramakrishnapuram at Sathy Road, Coimbatore. At that time, all of a sudden, a Mahendra Bolero Jeep bearing Regn. No.TN-37-BX-1141, driven by the 2nd respondent herein, in a rash and negligent manner without following the traffic rules, dashed behind the claimant's motor cycle. Due to this accident, the claimant fell down on the road and sustained grievous injuries.



Immediately, he was taken to Ganga Hospital, Coimbatore, for first aid and then shifted to Richmond Hospital, Coimbatore and admitted as inpatient. A criminal case was registered against the driver of the Mahendra Bolero Jeep/2nd respondent herein.

4. The claimant had filed a claim petition in M.C.O.P.No.523 of 2014, by the Motor Accidents Claims Tribunal (Special Subordinate Judge), at Coimbatore, claiming compensation of Rs.20,00,000/-, stating that the claimant was aged 25 years at the time of accident and he was hale and healthy and working as a Service Engineer with monthly income of Rs.15,200/-. Due to the impact of the accident and subsequent bed ridden, he was not able to attend his work owing to that, he was forced to borrow money from friends and relatives for his medical and family expenses. The claimant's nature of work requires physical fitness and sound health and he was actively discharging his duty before the accident. Due to this accident, he sustained multiple fractures over his left leg and left hand besides, two fingers in left hand became numb. The claimant was yet to get married and the marriage proposal was going on. But due to this accident, the progress of the marriage was appearing very gloomy and very dim.



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5. In order to substantiate the claim, on the side of the claimants, 3 witnesses were examined as P.W.1 to P.W.3 and 19 documents were marked as Ex.P.1 to Ex.P.19. On the side of the 3rd respondent/appellant/Insurance Company, no oral or documentary evidence was let in. However, one Court document was marked as Ex.C.1.

6. Before the tribunal, the 1st and 2nd respondents/2nd and 3rd respondents herein, were set ex-parte.

7. The Tribunal, after the hearing the arguments of the learned counsel for the claimant and the learned counsel for the 3rd respondent/appellant-Insurance Company, awarded compensation of Rs.12,50,964/- with interest at the rate of 7.5% by fixing liability on the 2nd and 3rd respondents therein who are the owner and insurer of the offending Jeep and directed the Insurance Company to pay the compensation.

8. Aggrieved by the award passed by the Tribunal, the Insurance Company has filed the present appeal.



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9. The learned counsel for the appellant/Insurance Company submitted that they are not disputing the accident, liability and also the manner of accident. The main dispute is that the quantum especially the multiplier method adopted by the Tribunal. He would submit that it is a case of injury. But the tribunal has adopted multiplier method and awarded compensation of Rs.12,50,964/- which is erroneous. Further, 2 disability certificates were produced by the claimant. One is said to have been given by the P.W.2/Doctor of Richmond Hospital where the claimant took treatment and the another one was issued by the Medical Board and they were marked as Ex.P.15 and Ex.C1 respectively. P.W.2/Doctor has assessed the disability at 45%. But as per the disability certificate Ex.C1, issued by the Medical Board, the claimant has suffered only 17% impairment. But the Tribunal has taken either of that and fixed 35% as functional disability without any substance which also warrants interference. He further submitted that there is no material to show that the claimant lost his job due to the accidental injuries and he has not proved that he suffered loss of earning beyond the period of treatment. Therefore, the Award of the Tribunal adopting multiplier method and fixation of disability, are perverse which warrants interference.

10. The learned counsel for the 1st respondent/claimant would



submit that due to the accident, the claimant sustained multiple fractures and also there was restricted movements of his left leg. As a Service Engineer, he always used to move from one place to other. But due to the accident, he was not in a position to move freely as before the accident and could not attend his work and thereby, he lost his job. Hence, considering the materials and medical reports, the Tribunal rightly fixed the percentage of disability and adopted multiplier method for awarding compensation. Therefore, there is no merit in the appeal and there is no perversity in the appreciation of evidence. Therefore, the appeal is liable to be dismissed.

11. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent and perused the materials available on record.

12. The accident took place on 07.12.2014. The accident is not in dispute and the manner of accident is also not in dispute. The offending Jeep was insured with the appellant during the period of accident which is also not disputed.



13. Now the main dispute is that adaptation of multiplier method for fixing the quantum. Therefore, the points for consideration is that, whether the adoption of multiplier method by the Tribunal is correct and whether the award passed by the Tribunal is a “just compensation”.

14. As far as the first point is concerned, though the claimant has filed the medical records and also disability certificates and a Doctor was also examined as P.W.2, a careful reading of the evidence of P.W.2 and the materials submitted by P.W.2, clearly shows that P.W.2 is not the Doctor who gave treatment to the claimant. During the cross examination, P.W.2 has admitted that he is one of the Doctors among the team who gave treatment to the claimant and that he is not an Ortho specialist. However, he has not given the disability certificate directly and he has also admitted that he has not given either treatment at the time of disability as seen from the entire medical records. Therefore, he has played his role only as one of the Doctors in the team for fixing 45% disability. Though the Tribunal has not taken 45% disability and taken only 35% disability, it has not given any reason for not accepting the disability of 45% fixed by the Doctor/P.W.2 (one of the team Doctors) in Ex.15. Further, though in the disability certificate issued by the



Medical Board/Ex.C1, the permanent disability is stated as 17%, the material does not show as to whether it is a total permanent disability or it is only partial permanent disability.

15. Though, the Tribunal has discussed about Ex.P.12/Termination letter, Ex.P.12 does not say anything that there is a nexus between the accident and losing of his job. In Ex.P.12, it is clearly stated that the claimant was terminated due to dereliction of duty, indiscipline and insubordination, the claimant has not given any reason that only due to the accident, dereliction, indiscipline and insubordination occurred. Therefore, the loss of job to the claimant has nothing to do with the accident.

16. Neither the claimant nor any expert say that the claimant is unfit to do the same job as he was doing before the accident and due to the accident, he is not in a position to do the same work in the very same way and the claimant has not given any specific evidence that due to the accident, there was loss of earning capacity. Therefore, without ascertaining these facts and giving any specific finding, the adopting multiplier method is erroneous. The Tribunal has not given any valid reason as to why the Tribunal has chosen the multiplier method.

17. As an appellate Court and final Court of fact finding, this Court can



independently re-appreciate the entire evidence and can give independent findings. This Court, while re- appreciating the entire evidence, finds no material to show that there is total permanent disability.

18. However, as per the disability certificate Ex.C1, issued by the Medical Board, the claimant has suffered 17% disability. Since the claimant is not able to establish that due to this disability, he lost his job and not in a position to do the same job as he was doing before the accident and also lost earning capacity, the multiplier method adopted by the Tribunal for fixing the quantum is set aside.

19. However, the since the Medical Board has assessed the disability at 17%. Therefore, by this Court taking into consideration of Ex.C1, fixes the disability of the claimant at 17%. Since at the relevant point of time, Rs.4,000/- was adopted for per percentage of disability, the claimant is entitled to Rs.68,000/- ($17\% \times \text{Rs.}4,000/-$) towards compensation for disability.



20. Accordingly, the award passed by the Tribunal is re-worked as follows:-

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S. No.	Particulars	Amount Awarded by the Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1	Compensation for partial permanent disability/Grievous Injuries	Rs.10,76,922/-		<i>Set aside</i>
2	Disability		Rs.68,000/- (17% x Rs.4,000/-)	Granted
3	Loss of Income (Rs.14,245/- x3)	Rs.42,735/-	Rs.42,735/-	<i>Confirmed</i>
4	Medical Bills	Rs.9,037/-	Rs.9,037/-	<i>Confirmed</i>
5	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	<i>Confirmed</i>
6	Loss of Amenities	Rs.50,000/-	Rs.50,000/-	<i>Confirmed</i>
7	Transportation to Hospital	Rs.10,000/-	Rs.10,000/-	<i>Confirmed</i>
8	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	<i>Confirmed</i>
9	Damage to Clothing	Rs.2,000/-	Rs.2,000/-	<i>Confirmed</i>
	Total	Rs.12,50,694/-	Rs.2,41,772/-	
	Rounded off		Rs.2,41,800/-	

16. The award of the Tribunal is modified by reducing the compensation amount from **Rs.12,50,694/-** to **Rs.2,41,800/-**.



17. The appellant/Insurance Company is directed to deposit the modified award amount of **Rs.2,41,800/-** to the credit of M.C.O.P.No.523 of 2014, on the file of Motor Accident Claims Tribunal (Special Subordinate Judge), Coimbatore, with cost and interest at the rate of 7.5% per annum, from the date of claim petition till the realization, less the amount if any already deposited, within a period of **eight weeks** from the date of receipt of copy of this judgment.

18. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

19. The appellant/Insurance Company is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal.



20. In the result, this Civil Miscellaneous Appeal is partly allowed.

Consequently Connected Miscellaneous Petition is closed. There shall be no order as to costs in the present appeal.

11.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

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

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



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P.VELMURUGAN. J.

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