



C.M.A. No. 1490 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.07.2023

PRONOUNCED ON : 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

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and

C.M.P.No.4178 of 2019

The Manager,
Reliance General Ins. Co. Ltd.,
No.6, Haddows Road,
Chennai - 600 006.

... Appellant/ 2nd respondent

Vs.

1. Venkatachalam

... Respondent / Petitioner

2. Gowrishankar

... Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award and Decree dated 20.07.2018 in M.C.O.P. No.209 of 2015, on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri.

For Appellant : Mr. C. Bhuvanasundari

For R1 : Mr. C. Kulanthaivel

For R2 : Dispensed with



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the Insurance Company against the Award and decree dated 20.07.2018 in M.C.O.P. No. 209 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri, challenging the liability fixed on the appellant and quantum of compensation awarded.

2. For the sake of convenience, the parties are referred hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant in brief is as follows:

On 17.05.2015 at about 6:30 p.m., the claimant was travelled in a Hero Honda two-wheeler bearing Registration No. TN-52-D-9821 as a pillioner along with Gopalakrishnan on Kalvadangam to Moolappathai road, while they reached near Cauvery Vaikkal Karai, a Bajaj Platina two-wheeler bearing Registration No. TN-24-V-4942 came in the opposite direction in rash and negligent manner on the right hand side of the road and hit on the two-wheeler and caused injuries to the claimant. Hence, the claimant filed a claim petition claiming compensation for a sum of



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Rs.20,00,000/- for the injuries sustained by him.

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4. The first respondent is the owner of the Bajaj Platina two-wheeler bearing Registration No. TN-24-V-4942 who has not contested the claim before the Tribunal and was remained Ex-parte. The second respondent is the insurer of the Bajaj Platina two-wheeler bearing Registration No. TN-24-V-4942 has filed counter and contended that claimant is responsible for the accident and both riders of the vehicles were not having valid driving licence. The claim made by the claimant is also on the higher side and prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W1 to P.W3 were examined and Exs.P1 to P13 were marked and on the side of the respondent no witnesses were examined and no documents marked.

6. After analysing the evidences place on record, the Tribunal in point No.1, has considered the case of the claimant relating to the allegation that the negligent act on the part of the rider of the first respondent and held that the rider of the first respondent vehicle is responsible for the accident.



In point No.2, the Tribunal has held that the second respondent is liable to pay the compensation. In Point No.3, the Tribunal has quantified the compensation and granted a sum of Rs.17,30,000/- along with interest @ 7.5% per annum from the date of filing of claim petition till the date of realisation.

7. Aggrieved over the Award, this appeal has been filed by the Insurance Company disputing the liability regarding the accident as well as questioning the compensation awarded.

8. The learned counsel for the Insurance company has submitted that the accident had happened as 'Head on collision' and the Tribunal has not considered the negligence on the part of the rider of the two-wheeler in which, the claimant has travelled and also the compensation awarded under various heads is also on the higher side more particularly, the compensation awarded by adopting multiplier method is arbitrary and prays to modify the Award.

9. The learned counsel for the claimant has submitted that the Tribunal after considering the evidence placed on record has rightly awarded



compensation against the appellant herein and there is no merit in this appeal and prays to dismiss the same.

10. Before the Tribunal, the claimant has examined himself as P.W.1 and also marked Ex.P1 - FIR, Ex.P16 - Rough Sketch, Ex.P18 - Final Report filed in the criminal case and Ex.P19 - the Judgement passed by the learned Judicial Magistrate No.1, Sankari, relating to the criminal case of the accident. The Tribunal has considered the above documents and it has also held that the driver of the Bajaj Platina two-wheeler, bearing Registration No. TN-24-V-4942 (i.e.,) the driver of the first respondent's two wheeler was charged for the accident and subsequently, he has been found guilty based on the Judgement passed by the learned Judicial Magistrate No.1, Sankari, in S.T.C. No. 1372 of 2015, dated 24.07.2015. P.W.1 has also adduced his evidence before the Tribunal that the rider of the two-wheeler in which the claimant had travelled, has been driven on the left hand side of the road, whereas, the driver of the first respondent vehicle came in the opposite direction in rash and negligent manner and dashed on their vehicle. This evidence has been corroborated with other documentary evidences as stated supra.



11. The respondent has not produced any contra evidence to support their case that both the riders of the two-wheelers are responsible for the accident. The Tribunal based on the evidences placed on record has rightly arrived to a conclusion that the driver of the first respondent two-wheeler bearing Registration No. TN-24-V-4942 (Bajaj Platina) is responsible for the accident and this Court finds no infirmity in the said finding, and the same is hereby confirmed.

12. The Tribunal has also accepted the percentage of Disability Certificate - Ex.P.28 issued by P.W.3 – Doctor, who has assessed the disability of the claimant. The P.W.3 stated that the claimant has sustained fracture on center part of his left femur bone which has been fixed with long steel plates and screws and the claimant has also sustained fracture on his left tibia bone and on left clavicle bone. Based on the injuries sustained by the claimant such as, fractures and reduction of muscle power and also based on tenderness, the P.W.3 (Doctor) has assessed the disability of the claimant as 43.83% permanent disability. The evidence of P.W.3 has been supported by Exs.P3 to P7, the Discharge Summaries issued by the Ganga Hospital, Coimbatore. This Discharge Summary has also elaborately shows the treatment given to the claimant. The Ex.P4-Discharge Summary shows that



the claimant has been admitted as in-patient from 17.05.2015 to 29.05.2015.

The Ex.P5 shows that the claimant has undergone treatment from 08.06.2015 to 10.06.2015 and other Discharge Summaries also shows that the claimant has undergone treatment from 01.09.2015 to 08.09.2015 and from 17.10.2016 to 21.10.2016 i.e., totally 29 days the claimant has taken treatment as in-patient at Ganga Hospital, Coimbatore. The claimant has also subsequently undergone treatment from 23.03.2017 to 11.04.2017 (20 days) at TPN Hospital, Erode and this Discharge Summary corroborates the evidence of P.W.3 - Doctor that the percentage of disability sustained by the claimant. Totally the claimant has undergone in-patient treatment for about 49 days. Based on the evidence, the Tribunal has fixed the disability of the claimant as 43%. Hence, this Court finds that there is no infirmity in the percentage of disability assessed by the Tribunal and the same is hereby confirmed.

13. Considering the nature of the injuries/fractures on his left femur bone, left tibia bone and on left clavicle bone and also its complications, the Tribunal has treated the disability sustained by the claimant as a functional permanent disability and accordingly, the Tribunal has adopted multiplier method and awarded just compensation. The petitioner herein is a milk



merchant and also an agriculturist, he requires good physique as well as capacity to lift heavy objects for his day to day activities and to meet out his livelihood. Since his capacity to do manual work has been drastically reduced by multiple fractures sustained by him. As per the guidelines issued by the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***, the claimant is entitled for compensation under the head loss of earning capacity, and the Tribunal has rightly awarded compensation under the head Loss of earning capacity. Accordingly, this Court also finds that there is no need for interference of the same. Even though, the claimant has relied on various exhibits i.e., Exs.P24 to P26 relating to the Account Books for his business activities and monthly income but the Tribunal has not accepted the same and had notionally fixed a sum of Rs.12,000/- per month as the monthly income of the claimant. Admittedly, the accident was held in the year 2015, the notional income of Rs.12,000/- fixed by the Tribunal for calculating loss of earning capacity is just and reasonable, same is hereby confirmed by this Court. The deceased is aged about 42 years at the time of accident and considering the age of the deceased, the Tribunal has applied proper multiplier of '14' as per the Judgment of the Hon'ble Supreme Court in ***Sarla Verma and Others vs. Delhi Transport Corporation and Another***



[2009 (2) TNMAC 1 SC : 2009 (6) SCC 121].

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14. The Tribunal has not awarded compensation any amount under the head future prospectus to the claimant. As per the judgements of the Hon'ble Apex Court in *Jagdish vs. Mohan and Others* [2018 (4) SCC 571] and *Erudhaya Priya vs. State Express Transport Corporation Ltd.,* [2020 INSC 466 (SC) Website] the claimant is entitled 40% towards future prospects. Accordingly this Court is inclined to grant a sum of Rs.3,48,000/- [870000 x 40%] under the head future prospects.

15. As far as Transportation charges is concerned, the Tribunal has awarded Rs.83,000/- based on Ex.P.10 (car rental receipts) and this Court is inclined to confirm the same.

16. The evidence placed on record shows that the claimant has undergone in-patient treatment for 49 days (almost for more than one year in different intervals) hence, the Tribunal has awarded Rs.20,000/- as Attender Charges and this Court of the view that the same is reasonable and the same is hereby confirmed. The claimant has also produced medical bills to the extent of Rs.5,98,887/- and the same has been marked as Ex.P8 and Ex.P22



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and the Tribunal has considered the same and awarded a sum of Rs.6,00,000/- under the head Medical Expenses, and the same is just and reasonable and this Court is inclined to confirm the same. The compensation awarded under other heads are hereby confirmed.

17. The compensation awarded 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)	Award confirmed or enhanced or granted
1.	Loss of earning power	Rs.8,70,000/-	Rs.8,70,000/-	Confirmed
2.	Medical Expenses	Rs.6,00,000/-	Rs.6,00,000/-	Confirmed
3.	Pain and suffering	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
4.	Transportation	Rs.83,000/-	Rs.83,000/-	Confirmed
5.	Extra Nourishment	Rs.30,000/-	Rs.30,000/-	Confirmed
6.	Attender Charges	Rs.20,000/-	Rs.20,000/-	Confirmed
7.	Future medical expenses	Rs.25,000/-	Rs.25,000/-	Confirmed
8.	Damage to articles	Rs.2,000/-	Rs.2,000/-	Confirmed
9.	Future Prospects	-----	Rs.3,48,000/-	Granted
	Total	Rs.17,30,000/-	Rs.20,78,000/-	Enhanced by Rs.3,48,000/-

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



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the compensation awarded by the Tribunal at Rs.17,30,000/- is hereby enhanced to **Rs.20,78,000/- [Rupees Twenty Lakhs and Seventy Eight Thousand only]** together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The Appellant-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.209 of 2015 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankagiri. On such deposit, the claimant is permitted to withdraw the amount now determined by this Court along with proportionate interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount now determined by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition stands closed.

14.09.2023



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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Sub Judge,
Motor Accident Claims Tribunal,
Sankagiri.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.,

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