



C.M.A.(MD).No.56 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.56 of 2017

and

C.M.P(MD) No.538 of 2017

The Branch Manager,
Bajaj Alliance General Insurance Company Limited,
G.V.R. Complex, 6A,
2nd Floor, Lawsance Road,
Condonement,
Thiruchirappalli – 620 001.

..... Appellant/ 2nd Respondent

-vs-

1. Balasubramaniyan
2. Suresh Babu

... Respondent / Petitioner

.... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree, dated 29.10.2014 passed in M.C.O.P No.343 of 2012 on the file of the Motor Accidents Claims Tribunal/ Special Subordinate Judge, Thanjavur in so far as quantum of compensation is concerned.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.G.Karnan – For R1
: No Appearance – For R2



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J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the Insurance Company challenging the award passed by the Motor Accidents Claims Tribunal/Special Subordinate Court, Thanjavur, made in M.C.O.P No.343 of 2012 primarily on the ground of quantum.

2. The injured claimant was travelling in a bicycle on 12.10.2010. The Lorry owned by the first respondent and insured the second respondent came from the opposite direction in a rash and negligent manner and dashed against the bicycle, in which, the claimant was seriously injured.

3. According to the claimant, he sustained fracture injuries in the head, right hand, chest region, right thigh, hip and abrasions all over the body. He was admitted to Vinodhagan Memorial Hospital at Thanjavur, on 12.10.2010 and he was discharged only on 03.11.2010 and he underwent surgery in the said hospital. Later for further treatment, he was admitted to Rohini Hospital, Thanjavur as an inpatient between 24.11.2010 to 27.11.2010. The claimant



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made a prayer for Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

4. The Insurance Company had filed a counter contending that the driver of the lorry was not having any valid driving license at the time of the accident and the respondent is not liable to pay the compensation and the injured claimant was negligent while driving his bicycle with two other people and therefore, the Insurance Company was not responsible to pay the compensation. The Insurance Company further disputed that the quantum of compensation as prayed for.

5. The Tribunal, after considering the oral and documentary evidence, arrived at a finding that the monthly income of the deceased was Rs.6,000/- (Rupees Six Thousand only) and applying the multiplier method, arrived at the quantum of compensation under the head of loss of income at Rs.5,94,000/- (Rupees Five Lakhs Ninety Four Thousand only). Thereafter, for future prospects, at the rate of 30% amount of Rs. 1,78,200/- (Rupees One Lakh Seventy Eight Thousand and Two Hundred only) was awarded. For pain and sufferings, Rs.75,000/- (Rupees Seventy Five Thousand only) was



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awarded. For future expenses, a sum of Rs.20,000/- (Rupees Twenty Thousand only) was awarded and a sum of Rs.5,200/- (Rupees Five Thousand and Two Hundred only) was awarded towards attender charges and towards medical expenses, a sum of Rs.2,03,325/- (Rupees Two Lakhs Three Thousand Three Hundred and Twenty Five only) was awarded. A sum of Rs.20,000/- (Rupees Twenty Thousand only) was awarded towards Transport Expenses and a sum of Rs.10,275/- (Rupees Ten Thousand Two Hundred and Seventy Five only) was awarded towards extra nourishment. This award is under challenge in the present appeal.

6. According to the learned counsel appearing for the appellant, the injured claimant has not established that he has suffered functional disability. However, the Tribunal has proceeded to invoke the multiplier method after arriving at the notional monthly income at the rate of Rs.6,000/- (Rupees Six Thousand only). He further contended that though the injured claimant is said to have sustained the fracture in the head and he was treated by the Neuro Doctor, the said Neuro Doctor was not examined. The disability said to have been assessed by the Neuro Doctor cannot be taken into consideration for arriving at the total disability.



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7. He further contended that the Dentist who was examined as P.W.2 has assessed the disability at 45%, the Ortho Doctor who was examined as P.W.3 has assessed the disability at 41%. The Neuro Doctor has relied upon the assessment of the Ortho Doctor at 50% disability.

8. According to the learned counsel appearing for the appellant, the Ortho Doctor just referred to the letter of the Neuro Doctor who assessed the disability at 50%. Neuro Doctor has not been examined and therefore, 50% should not be taken into consideration while arriving at disability. He further contended that the Ortho Doctor has taken 20% of disability towards difficulty in breathing. However, no Pulmonologist was examined. Therefore, he prayed for setting aside the award of the Tribunal.

9. Per contra, the learned counsel appearing for the appellant pointed out that immediately after the accident, the injured claimant was admitted to Vinodhagan Memorial Hospital at Thanjavur. As per Ex.P2, Discharge Summary issued by the said Hospital, all the Doctors viz., Ortho, Dentist and Pulmonologist have assessed the injured claimant and they have recorded



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their opinion in the discharge summary. He further contended that it has been specifically recorded in the Accident Register viz., Ex.P.7 and Ex.P.2, discharge summary that there is faciomoxillary injury. Therefore, the opinion expressed by the Dentist P.W.2 cannot be discarded.

10. The learned counsel appearing for the respondent had further contended that the Wound Certificate Ex.P.10 and discharge summary Ex.P.11 of the Rohini Hospital clearly indicated all the injuries sustained by the claimant and the disability sustained by the injured claimant. He further relied upon Ex.P.13 and Ex.P.14 disability certificates issued by the Dentist and the Ortho Doctor accompanying the opinion of the Neurologist. Therefore, according to the learned counsel appearing for the claimant, there is no ground to interfere in the quantum of award by the Tribunal. Hence, he prayed for sustaining the award passed by the Tribunal.

11. I have carefully considered the submissions made by the learned counsel on either side.



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12. The present appeal has been filed by the Insurance Company primarily challenging the quantum. The claimant is the owner of a hotel and he is said to be earning a monthly income of Rs.25,000/- (Rupees Twenty Five Thousand only). The nature of injuries are reflected in Ex.P2, discharge summary, Ex.P.7 Accident Register and Ex.P.10, Wound Certificate. These injuries will clearly indicate that the injured claimant has sustained the fracture injuries in the head, right hand, right thigh and the hip area. Therefore, there cannot be any dispute that the injuries are serious in nature. Under Ex.P.14, disability certificate, the Ortho Doctor has arrived at a disability at 41%.

13. According to the learned counsel appearing for the appellant, 20% relating to the difficulty in breathing cannot be certified by the Ortho Doctor and the same has to be excluded. A perusal of Ex.P2, discharge summary indicates that the Pulmonologist has given an opinion that there is a multifocal lung contusions seen predominantly involving the posterior segments mid and lower zones with associated mild pneumothorax. Therefore, it is clear that the fracture in the rib bone has also caused damage to the lungs.



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14. In view of the above said facts, I am not inclined to accept the contention of the learned counsel for the appellant that the Ortho Doctor cannot speak about the 20% disability relating to breathing which is consequence of the fracture in the rib bone which could be spoken to by the Ortho Doctor. Therefore, as far as the 41% of disability arrived by the Ortho doctor is concerned, this Court is not inclined to interfere the said portion.

15. As far as the certificate issued by the Dentist under Ex.P.13, who was examined as P.W.2 is concerned, it is clear that the claimant has lost two teeth, however, the loss of two teeth has not been mentioned either in Ex.P.2, Ex.P.10 and Ex.P.11. Therefore it is clear that the certificate issued by the said Dentist cannot be relied upon.

16. As far as the certificate of the Neuro Doctor which was marked as Ex.P.14 is concerned, which reflects that the injured claimant has sustained 15% disability, it is proved that the said Doctor has not been examined. It could be seen from the records that the injured claimant has sustained injuries in head and he has undergone a surgery in the head and one of his bones in the head has been removed. The Ortho Doctor had deposed that the temporal



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bone has been damaged and the same has been removed. Even though the Neuro Doctor has not been examined, the assessment of the Doctors under Ex.P.2 and Ex.P.11 will clearly indicate that there is serious injury in the head of the injured claimant and he has undergone a surgery also. Therefore, the disability would be assessed at 30% and it cannot be assessed at 50%. Totally, an extent of 64% and 30% disability sustained to the injured claimant shall be assessed at 71 % and not 75% as taken by the Tribunal.

17. The Tribunal has erroneously applied the multiplier when it has not arrived at a finding that the injured claimant has sustained functional disability. Therefore, a sum of Rs.3,000/- (Rupees Three Thousand only) per percentage of total disability, loss of income arising out of partial permanent disability would be Rs.2,13,000/- (Rupees Two Lakhs and Thirteen Thousand only). This Rs.2,13,000/- (Rupees Two Lakhs and Thirteen Thousand only) is substituted in the place of Rs.5,94,000/- (Rupees Five Lakhs Ninety Four Thousand only) and Rs.1,78,200/- (Rupees One Lakh Seventy Eight Thousand and Two Hundred only) which were awarded under the head of permanent disability and the loss of future prospectus and the amounts awarded under the other heads are hereby confirmed.



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18. Therefore, the total award of Rs.11,81,000/- (Rupees Eleven Lakhs and Eighty One Thousand only) awarded by the Tribunal is hereby modified and reduced to the extent of Rs.6,21,800/- (Rupees Six Lakhs Twenty One Thousand and Eight Hundred only) which shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition. Excess amount if any deposited by the Insurance Company may be refunded to them along with accrued interest.

19. This Civil Miscellaneous Appeal is allowed to the extent as stated above. There shall be no order as to costs. There shall be connected Miscellaneous Petition is closed.

03.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal/
Special Subordinate Judge,
Thanjavur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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