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C.M.A.No.1613 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

C.M.A.No.1613 of 2022

United India Insurance Co.Ltd,
having its Divisional Office at No.1171,
Muthiah Complex, Erode 638 011.

..Appellant

Vs.

1.G.Baskar
2.R.Karuppasamy
3.G.Lakshmanan

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988
against the Award and decree dated 27.08.2008 made in M.C.O.P.No.01 of
2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate
Judge, Erode.

For Appellant : Mr.S.Arun Kumar

For 1st respondent : Mr.R.Nalliyappan



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J U D G M E N T

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(The order of the Court was made by J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been preferred by the Insurance Company, challenging the judgment and decree dated 27.08.2019 passed in M.C.O.P.No.362 of 2015, on the file of Motor Accidents Claims Tribunal, Special Subordinate Judge, Erode.

2. The Insurance Company is the Appellant; 1st respondent is the claimant; 2nd respondent is the driver of the offending vehicle and the 3rd respondent is the owner of the vehicle.

3. The 1st respondent viz., Mr.G.Baskar, victim, has filed the said claim petition before MACT, Erode, claiming a sum of Rs.40,00,000/- as compensation for the injury sustained due to the accident that took place on 27.12.2014.

4. The case of the claimant/petitioner is that on 27.12.2014 at about 11.00 am when he was standing with his motorcycle, in front of Bharath Petrol Bunk located in Erode to Nasiyanur road, the 2nd respondent drove the auto



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bearing registration No.TN 33 AM 5703 in a rash and negligent manner and while entering into the petrol bunk, hit against the claimant/1st respondent and caused the accident. Due to the said accident, the 1st respondent sustained bone fracture in head and admitted in Erode K.M.C.H Hospital, where he took treatment as inpatient for nearly 40 days. The injured/claimant claimed a sum of Rs.40,00,000/- as compensation before the Tribunal. The Tribunal, after examining evidence adduced on both sides, awarded a sum of Rs.32,54,000/-. This appeal is filed by the appellant-insurance company assailing the quantum of compensation.

5. Heard the learned counsel the appellant Insurance Company, learned counsel for the 1st respondent-claimant and perused the materials available on record.

6. The learned counsel for the appellant/Insurance Company would submit that the Tribunal erred in holding 40% as loss of earning power and applying multiplier method is contrary to the facts of the case particularly when the Medical Board has fixed disability as 30%. Further, the 1st respondent has also not filed acceptable proof towards medical expenses to award a sum of Rs.6,97,000/-.



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7. The learned counsel for 1st respondent submitted that the Tribunal has given clear reasons for granting the compensation, hence, the award passed by the Tribunal does not require interference of this Court.

8. In the instant case, the disability certificate that has been issued by the Medical Board was marked as Ex.C1 assessing 30% disability. Whereas PW2 Doctor who has treated the 1st respondent has given Disability Certificate, assessing 50% disability. The tribunal taken the disability as 40% and adopted multiplier method by taking 14 as multiplier and determined Rs.23,52,000/- as compensation for Permanent disability. However, Ex.P.11 shows that petitioner sustained 11 fractures, 4 injuries are grievous in nature and skull of the petitioner was opened and surgery done, due to which, the petitioner's working power much reduced and he is affected by functional disability. Relying on the judgment reported in **2017 ACJ 284 [The Branch Manager, M/s.TATA AIG General Insurance Co.Ltd., Vs. Prabhu and others]**, wherein, it is held that if certificates of permanent disability are issued by Medical Board, they are based on Central Government Circular dated 13/6/2001 and it adds credibility and authenticity, we are of the view that 30% disability assessed by the Medical Board is to be taken for determining the compensation. Accordingly, taking



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30% functional disability and adopting multiplier 14, we determine the compensation for Permanent disability as under:-

$$\text{Rs.}35,000/- \times 12 \times 14 \times 30\% = \text{Rs.}17,64,000/-.$$

9. The claimant was a driver and sustained multiple fracture and injuries in the head and underwent surgery. Therefore, he would not have been able to get back to his normal work for some period after the accident. Therefore, this Court is inclined to fix the compensation under the head “Loss of earning during the period of treatment” as Rs.40,000/-.

10. The 1st respondent had undergone surgery in head and was treated as an inpatient for nearly 40 days. However, the Tribunal has not granted any compensation under the head of “Attender charges”. Hence, considering his long period of admission in the hospital, we deem it proper to grant compensation of Rs.25,000/- under the head “Attender charges”.

11. That apart, the Tribunal has granted Rs.10,000/- for Extra Nourishment and Rs.40,000/- towards transport charges. This Court is of the view that the compensation under the said two heads (i.e.) Extra Nourishment



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and Transport charges, is of higher side and therefore, the compensation of

Rs.10,000/- under the heads Extra nourishment, is deleted and towards the Head of transport expenses, the amount is reduced from Rs.40,000/- to Rs.10,000/-.

12. The compensation fixed under the other heads are reasonable and it does not require interference of this Court. The modified compensation is as under:-

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earnings during the period of treatment	Nil	40,000	Added
2.	Transport to Hospital	40,000	10,000	Reduced
3.	Extra nourishment	10,000	nil	Deleted
4.	Attender charges	nil	25,000	Added
5.	Damages for clothes and articles	5,000	5,000	Confirmed
6.	Medical expenses	6,97,000	6,97,000	Confirmed
7.	Pain and sufferings	1,50,000	1,50,000	Confirmed
8.	Permanent disability & loss of earning power	23,52,000	17,64,000	Reduced
	Total	32,54,000	26,91,000	Reduced

13. In the result, C.M.A. is partly allowed and the award is modified.



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The compensation awarded by the Tribunal at Rs.32,54,000/- is hereby

reduced to Rs.26,91,000/- (Rupees Twenty Six Lakhs Ninety One Thousand only)) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P. No.362 of 2015 on the file of Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode, less the amount if any already deposited, within a period of two months from the date of receipt of copy of this Judgment. On such deposit being made, the 1st respondent is entitled to withdraw the same by filing proper application. Further, the 1st respondent/claimant is entitled proportionate costs and Advocate fees as per Rules.

(J.N.B,J.) (R.S.V., J.)
18.11.2024

Index : Yes / No
Internet : Yes
sk/nvsri

To

The Motor Accident Claims Tribunal,
Special Subordinate Judge, Erode.

J. NISHA BANU, J.
and
R.SAKTHIVEL,J.

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