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CMA NOS.955 & 957 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 06 / 2024

JUDGMENT PRONOUNCED ON : 10 / 07 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NOS.955 AND 957 OF 2022ANDCMP NOS.7061 AND 7062 OF 2022CMA NO.955 OF 2022

The New India Assurance Co. Ltd.,
Divisional Office
No.1, C.S.I. Building,
Officer's Line, Vellore – 1.

... Appellant /
2nd Respondent

Versus

1.P.Balasubramanian

... 1st Respondent /
Petitioner

2.S.Muruganandham

... 2nd Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.243 of 2019 dated 04.03.2021 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Vellore @ Ranipet.

For Appellant : Mr.J.Chandran

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For Respondent-1 : Mr.M.Sivakumar

For Respondent-2 : Served - No appearance

CMA NO.957 OF 2022

The New India Assurance Co. Ltd.,
Divisional Office
No.1, C.S.I. Building,
Officer's Line, Vellore – 1.

... Appellant /
2nd Respondent

Versus

1.R.Babu @ Sureshbabu

... 1st Respondent /
Petitioner

2.S.Muruganandham

... 2nd Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award passed in M.C.O.P.No.244 of 2019 dated 04.03.2021 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Vellore @ Ranipet.

For Appellant : Mr.J.Chandran

For Respondent-1 : Mr.M.Sivakumar

For Respondent-2 : Mr.N.S.Amarnath



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COMMON JUDGMENT

Feeling aggrieved with the Common Award dated March 4, 2021 passed in M.C.O.P.Nos.243 and 244 of 2019 by the 'Motor Accident Claims Tribunal (II Additional District Court) Vellore @ Ranipet' [henceforth 'Tribunal' for brevity] the second respondent – Insurance Company has preferred these Civil Miscellaneous Appeals.

2.For the sake of convenience, henceforth the parties will be referred to as per their array before the Tribunal i.e., 'appellant' will be referred to as 'second respondent – Insurance Company'; 'first respondent in CMA No.955 of 2022 namely P.Balasubramanian' will be referred to as 'first petitioner'; 'first respondent in CMA No.957 of 2022 namely R.Babu @ R.Suresh Babu' will be referred to as 'second petitioner - pillion rider' and 'second respondent namely S.Muruganandham' will be referred to as 'first respondent'.



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Petitioners' Case:

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3.The case of the petitioners is that on September 8, 2019, at about 19.45 hours, the first petitioner was riding his Motorcycle bearing Registration No.TN23-AP-7780 in the Ponnai to Lalapet Main Road with the second petitioner as pillion rider. While nearing Palani's house in Nellikuppam, the first respondent, who is the owner and driver of the Auto bearing Registration No.TN23-AP-9270, drove rashly and negligently from the opposite direction, collided with their Motorcycle and caused grievous injuries to both the petitioners.

3.1.Immediately, the first petitioner was rushed to Government Hospital, Walaja and then shifted to Government Hospital, Vellore, for further treatment. The second petitioner – pillion rider was taken to Scudder Memorial Hospital, Ranipet for treatment.

3.2.A criminal case in Crime No.394 of 2019 under Sections 279 and 337 of the Indian Penal Code, 1860 was registered on the file of Sipcot



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Police Station, Ranipet, against the first respondent, who is the owner cum Driver of the Auto.

3.3. According to the first petitioner, at the time of accident, he was working in G.V. Industries Company and was earning a sum of Rs.20,000/- per month. According to the second petitioner – pillion rider, he was also working in G.V. Industries Company and was earning a sum of Rs.15,000/- per month.

3.4. Therefore, the first petitioner filed Motor Claim Original Petition in M.C.O.P.No.243 of 2019 claiming compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) from the respondents while the second petitioner – pillion rider filed Motor Claim Original Petition in M.C.O.P.No.244 of 2019 claiming compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) from the respondents.

First Respondent's case

4. The first respondent filed counter wherein he denied the averments made in both the Original Petitions.



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Second Respondent's case

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5.The second respondent – Insurance Company filed counter stating that the alleged accident took place in night hours in a dark area, due to which, the petitioner had poor visibility. Due to this limited visibility, the first petitioner suddenly moved to the right side of the road and collided with the Auto coming from the opposite direction. The petitioners are solely responsible for the alleged accident and therefore, they are not entitled to any compensation from the respondents. Further, the compensation claimed by both the petitioners is excessive. Accordingly, the second respondent – Insurance Company prayed to dismiss both the Motor Claim Original Petitions.

6.At trial, on the side of the petitioners, first petitioner was examined as P.W.1 and second petitioner – pillion rider was examined as P.W.2 and Ex-P.1 to Ex-P.9 were marked. Neither witnesses nor documents were marked on the side of the respondents.



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7.The Tribunal, after considering the oral and documentary evidence available on record, came to the conclusion that the accident occurred due to the rash and negligent driving of the first respondent – owner cum driver of the Auto. Though both the petitioners have not produced any document to show their monthly income, the Tribunal notionally fixed a sum of Rs.9,000/- as monthly income for both the petitioners.

8.As far as the first petitioner – P.Balasubramanian is concerned, the Tribunal awarded a sum of Rs.9,82,800/- under the head - 'loss of earning capacity' - and also awarded further compensation under various heads. The Tribunal arrived at a total compensation of Rs.10,87,800/- (Rupees Ten Lakhs Eighty Seven Thousand Eight Hundred Only).

9.As far as the second petitioner – R.Babu @ R.Suresh Babu is concerned, the Tribunal awarded a sum of Rs.16,52,400/- under the head - 'loss of earning capacity' - and also awarded further compensation under various heads and thus totally arrived at a compensation of Rs.17,37,400/- (Rupees Seventeen Lakhs Thirty Seven Thousand and Four Hundred Only).



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10. Feeling aggrieved with the Award, the second respondent – Insurance Company preferred these Civil Miscellaneous Appeals.

Arguments

11. The learned counsel appearing for the appellant – Insurance Company submitted that the petitioners in both the Original Petitions have not produced any documents to substantiate their monthly income. Further submitted that the Tribunal failed to appreciate the P.W.2's evidence and erroneously applied multiplier method to the second petitioner – pillion rider. Further, the notional income fixed by the Tribunal at Rs.9,000/- is on the higher side. Accordingly, he prayed to modify the Award.

12. Per contra, learned counsel for the first respondent in both appeals has submitted that the occurrence took place in the year 2019; that the petitioners were not able to produce their Salary Certificate; that at the time of accident, the first petitioner – P.Balasubramanian was 46 years old and the second petitioner – R.Babu @ R.Suresh Babu was 30 years old; that



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considering the age of the petitioners and the severity of the injuries, the Tribunal has rightly fixed notional income at Rs.9,000/- per month; that there is no warrant to interfere with the quantum of compensation arrived at by the Tribunal. Accordingly, he prayed to dismiss both appeals.

13.This Court has considered the submissions made on either side.

14.The accident occurred on September 8, 2019 at about 19.45 hours. A criminal case in Crime No.394 of 2019 under Sections 279 and 337 of The Indian Penal Code, 1860 was registered against the first respondent. The Tribunal came to the conclusion that the accident occurred only due to the rash and negligent driving of the first respondent. As far as the quantum of compensation is concerned, considering the age of the petitioners and severity of the injuries suffered by the first and second petitioners, the Tribunal applied multiplier method.



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15. After the accident on September 8, 2019, the first petitioner –

P. Balasubramanian was initially taken to Government Hospital, Walaja and thereafter, he was admitted in Government Vellore Medical College and Hospital, Vellore. Later, he was admitted in Rajiv Gandhi Government General Hospital, Chennai on September 19, 2019 and he was discharged on October 17, 2019. In the interregnum, he underwent Surgery on September 27, 2019 in his fore-arm and leg. The Doctor opined that the first petitioner suffered grievous injuries. The Disability Certificate would show that the first petitioner suffered 70% disability. Due to the injuries sustained by him, he is not able to resume his job. Moreover, he is facing difficulty while sitting and walking.

16. Under such circumstances, this Court is of the considered view that the Tribunal has rightly applied multiplier method for the first petitioner. On perusal of the records, it is seen that the first petitioner did not produce any documents to prove their monthly income. However, in the year 2019, the first petitioner could have easily earned a sum of Rs.9,000/- each. Hence, this Court is of the view that the Tribunal has rightly fixed the notional income at Rs.9,000/- and the same does not require any interference.

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17.As far as the second petitioner – R.Babu @ R.Suresh Babu is concerned, he was taken to Scudder Memorial Hospital, Ranipet and he took treatment as inpatient for 9 days from September 8, 2019 to September 16, 2019. On September 8, 2019, he underwent a Surgery at Scudder Memorial Hospital, Ranipet. Thereafter, he was referred to the Medical Board, Government Vellore Medical College and Hospital, Vellore to assess his disability and the Medical Board has assessed his disability as 90%. At this juncture, it is pertinent to note that the second petitioner – R.Babu @ R.Suresh Babu examined as P.W.2, in his evidence deposed that he is disabled by birth and his disability was assessed as 80 % at birth. Further he deposed that he has recovered fully from the injuries.

18.The second petitioner has not produced any document to prove his employment and earning capacity before the accident. IN these circumstances, this Court is of the considered view that the second petitioner could have atleast earned a sum of Rs.3,000/- per month. Accordingly, his monthly is fixed notionally at Rs.3,000/- per month. At the time of accident, the second petitioner was 30 years old. Applying 40% future prospects and



adopting multiplier 17, the loss of earning capacity would be Rs.7,71,120/- (Rs.4200 X 12 X 17 X 90/100). His disability was assessed at 90%. Hence, the Tribunal is right in adopting multiplier method. However, the Tribunal, without any basis, notionally fixed a sum of Rs.9,000/- as his monthly income which is erroneous. Hence, this Court is re-worked compensation to the second petitioner as follows:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1	Loss of Earning Capacity (Rs.4200 X 12 X 17 X 90/100)	Rs.7,71,120.00
2	Pain and Suffering	Rs.30,000.00
3	Loss of Amenities	Rs.25,000.00
4	Cost of Attender	Rs.10,000.00
5	Extra Nourishment	Rs.15,000.00
6	Transportation	Rs.5,000.00
	Total	Rs.8,56,120.00

19.In the result,

(a) CMA No.955 of 2022 is dismissed and the Award dated March 4, 2021 passed in M.C.O.P.No.243 of 2019 by the Tribunal is hereby confirmed.



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(b) CMA No.957 of 2022 is partly allowed and the Award of the Tribunal is reduced from Rs.17,37,400/- to Rs.8,56,120/- (Rupees Eight Lakh Fifty Six Thousand One Hundred and Twenty Only).

(i)The appellant – Insurance Company is directed to deposit the modified Award amount of Rs.8,56,120/-, less the amount if any already deposited, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization, within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

(ii)On such deposit being made, the second petitioner – R.Babu @ Sureshbabu is permitted to withdraw the entire amount, on filing proper application.

(iii)The appellant – Insurance Company is permitted to withdraw the excess amount, if any already deposited.

(c)Considering the facts and circumstances of the case, there

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shall be no order as to costs.

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(d)Consequently, connected Civil Miscellaneous Petitions are closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
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To

The Motor Accident Claims Tribunal
(II Additional District Judge)
Vellore @ Ranipet.

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R.SAKTHIVEL, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
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