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C.M.A. No.2397 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. RAJASEKAR

C.M.A.No.2397 of 2021

and

C.M.P.No.13670 of 2021

Shriram General Insurance Co.Ltd.,
Door No.66, 2nd floor, City Centre,
Thirumalai Pillai Road,
T.Nagar, Chennai.

... Appellant

Vs.

1. Ganesan
2. Murthy
3. Allah Baksh
4. United India Insurance Co.Ltd.,
Door No.794/11, Trunk Road,
Poonamallee, Chennai 600 056.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.03.2021 made in M.C.O.P.No.174 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court II, Villupuram.

For Appellant : Mr.S.Dhakshnamoorthy

For Respondents : Mr.V.S.Sivasundaram for R1

J U D G M E N T



This Civil Miscellaneous Appeal has been filed by the Insurance Company/2nd respondent to set aside the award dated 29.03.2021 made in M.C.O.P. No.174 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court II, Villupuram.

2. The appellant / Insurance Company has preferred this appeal questioning the quantum of compensation awarded by the Tribunal in favour of the 1st respondent / claimant for the injuries sustained by him in a road accident that took place on 24.01.2016. The parties herein are referred as per the litigative status before the claims Tribunal.

3. The facts leading to filing of the claim petition are as follows :-

On 24.01.2016 at about 3.30 hours near the Munidiyampakkam Sugar Mill Cross Road, Villupuram to Chennai N.H.Bye Pass road, Claimant travelled as a Substitute Driver of the passenger Omni Bus, which belongs to the 3rd respondent bearing Reg.No.P.Y.01-CJ-5912 from Kanniyakumari to Chennai and it was driven by the Driver viz., Poomani in a normal speed. While so, a Goods Carriage Lorry (HMV) which belongs to the 2nd respondent bearing Reg.No.TN01-AA-0452 was driven by its driver one



Elumalai in a rash and negligent manner, with high speed and without observing the traffic norms came from the service road and dashed against the Omni bus in which claimant travelled and resulted in causing injuries to claimant and the passengers of the bus including the Driver Poomani. Therefore, claimant has filed claim petition against the respondents seeking for compensation of Rs.15,00,000/- under Section 166 of Motor Vehicles Act.

4. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to rash and negligent driving by the driver of the lorry owned by 2nd respondent, insured with the appellant / Insurance Company and thereby directed them, either jointly or severally to pay a sum of Rs.19,99,000/- as compensation.

5. Aggrieved by the quantum of compensation, the Insurance Company/appellant has preferred this appeal.

6. The learned counsel appearing for the appellant/Insurance Company submitted that the claimant has sustained multiple fractures and his disability was assessed by the Medical Board to the extent of 60%, subsequently the claimant has renewed his license and Tribunal has fixed 100% for loss of



earning capacity which is on the higher side and prays to modify the compensation under the head loss of earning capacity. In support of his contention, he relied on the report submitted by the Medical Board. He further submitted that the Driving License of the claimant for the period from 26.09.2020 to 25.09.2025 is renewed and thus claimant is fit to drive a vehicle and therefore interference of this Court is necessitated.

7. The learned counsel appearing for the claimant submitted that it is true that the license of the claimant has been renewed but it was done through the office in which he was working without proper consent received from the claimant. After the injury, the claimant was not able to do his earlier avocation of driving and he has lost the earning capacity to the extent of 100%. Therefore, the assessment of 100% is sustainable and interference of this Court is unwarranted under the said head viz., loss of earning capacity and this Court may issue appropriate directions in the above regard.

8. Heard Mr.S. Dhakshinamoorthy, learned counsel for the appellant / Insurance Company and Mr.V.S. Sivasundaram, learned counsel for the 1st respondent. The 2nd respondent remained ex-parte before the Tribunal and therefore, he is set ex-parte by this Court.



9. On perusal of the materials available on record, it is seen that at the time of accident, the avocation of the claimant was Driver and in the accident, he sustained multiple injuries, spinal cord injuries. Resultantly, he could not able to do his work like as he was doing earlier. It is further stated that the claimant could not able to stand, sit and squat. The Tribunal has observed in its award that claimant has sustained spinal cord injuries in D4, D6, D9, D7 and D10 and undergone surgery. Further, as per Ex.C1/disability certificate, which has been issued by the Medical Board stated that the 1st respondent has sustained disability at 60%, but the Tribunal has fixed the functional disability at 100% and adopted the multiplier method. It is observed in the impugned award that by following the decision rendered by the Hon'ble Supreme Court in the case of **Raj Kumar vs. Ajay Kumar & Anr.** reported in **2012 ACJ (1)**, the compensation under the head permanent disability was assessed as loss of earning capacity at 100%. The Tribunal has also stated that the claimant was not in a position to stand, sit and walk and requires assistance continuously as if he is in a vegetative state. But that is not the condition of the claimant as on today. He has recovered well. This Court is of the view that 60% disability assessed by the Medical Board would be appropriate and since he is able to walk and do his regular work on his own. Today, the claimant



also appeared before this Court. Renewal of license was done by his employer.

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10. Considering the age and avocation of the claimant, this Court is inclined to fix notional income of Rs.12,000/- per month as against Rs.7,000/- fixed by the Tribunal. As per *Erudhaya Priya vs. State Express Transport Corporation Ltd.*, [2020 SCR 299 : 2020 ACJ 2159], the claimant is also entitled to 40% future prospects i.e., Rs.4,800/-. As per *Sarla Verma and others Vs. Delhi Transport Corporation and others* [2009 ACJ 1298 SC : 2009 (6) SCC 121], the multiplier is fixed as '16' by considering the age of the claimant at the time of the accident. Thus, the compensation awarded by the Tribunal towards loss of earning capacity is assessed as **Rs.19,35,360/-** (Rs.12,000/- + Rs.4,800/- x 12 x 16 x 60/100).

11. The amount awarded by the Tribunal under the head pain and suffering was Rs.2,00,000/- and the same is reduced to Rs.75,000/- and Rs.1,00,000/- under the head loss of amenities is reduced to Rs.50,000/-. Excepting the disability compensation, pain and suffering and loss of amenities, the amount awarded by the Tribunal under various other heads seems to be quite reasonable and thus no modification of amount is required.



12. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Pain and sufferings	2,00,000/-	75,000/-
Loss of earning capacity	16,38,000/-	19,35,360/-
Nutrition	20,000/-	20,000/-
Damage to clothes	1,000/-	1,000/-
Transportation	20,000/-	20,000/-
Attender charges	20,000/-	20,000/-
Loss of amenities to life	1,00,000/-	50,000/-
Total	19,99,000/-	21,21,360/-

13. In the result, the appeal is disposed of with the modification and the award passed by the Tribunal is modified by enhancing the compensation from Rs.19,99,000/- to Rs.21,21,360/- as stated supra. The appellant / Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit 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.174 of 2017 on the



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file of the Motor Accidents Claims Tribunal, Special Sub Court II, Villupuram. On such deposit, the 1st respondent / claimant is permitted to withdraw the award amount now determined by this Court, by filing appropriate application before the Tribunal. The appellant / Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P. No.174 of 2017, if the award amount has already been deposited by them. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2024

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Index : Yes / No
Internet : Yes / No

K. RAJASEKAR, J.

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To



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1.The Motor Accidents Claims Tribunal,
Special Sub Court II, Villupuram.

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

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