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C.M.A.No.1746 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1746 of 2020

and

C.M.P.No.12826 of 2020

Cholamandalam MS General
Insurance Co.Ltd.
“Dare House”
2nd Floor, No.2, N.S.C.Bose Road,
Chennai – 600 001.

... Appellant

Vs.

1. Thirumal

2. N.Sakthivel

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 03.01.2020 in M.C.O.P.No.36 of 2017 on the file of the Motor Accident Claims Tribunal (Subordinate Judge) (FAC) at Palacode.

For Appellant : Mr.R.Sree Vidhya

For Respondents : Mr.V.R.Annagandhi for R1



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JUDGMENT

The above appeal is filed by the appellant / insurance company challenging the compensation awarded by the Motor Accidents Claims Tribunal, (Subordinate Judge) (FAC) at Palacode in the Judgment and decree dated 03.01.2020 in M.C.O.P.No.36 of 2017.

2. It is the case of the claimant that, on 09.09.2014 at about 7.00 p.m., when the claimant / first respondent was riding his motor cycle bearing Regn.No.TN 29 AU 6899, at that time a lorry bearing Regn.No.TN 29 AM 2558 belonging to the second respondent driven by its driver, while proceeding in front of the claimant's vehicle, stopped suddenly without giving any indication / signal, due to which the claimant dashed the lorry of the second respondent, resulting in sustaining grievous injuries. Claiming compensation in a sum of Rs.20,00,000/-, the claim petition has been filed by the claimant.

3. Before the Tribunal, the claimant had examined P.W.1 and P.W.2 and marked Exs.P.1 to Ex.P.11. On the side of the respondents, they have examined R.W.1 and R.W.2 and marked Exs.R1 to R4. After



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adjudication, the Tribunal awarded a sum of Rs.4,47,972/- as compensation to the claimant. Challenging the same, the appellant / insurance company has preferred the present appeal.

4. The learned counsel appearing for the appellant / insurance company submitted that, though it is clear from the disability certificate issued by the Medical Board that the percentage of disability assessed by an independent doctor is 15% partial permanent disability which is not functional in nature and the same would not hamper the claimant from doing his day to day work. However, contrary to the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, the Tribunal has fixed 15% functional disability under the head “compensation” by adopting multiplier method which is *per se* unsustainable. He further submits that though the FIR has been registered as against the driver of the lorry, however, after investigation, the law enforcing agency had closed the case as mistake of fact stating that the driver of the motor cycle in a rash and negligent manner had hit the parked lorry. When the first respondent / claimant is a tortfeasor, the Tribunal ought not to have fixed the negligence as against



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the Insurance company. However, the compensation awarded under various other heads are also highly excessive, which warrants interference.

5. The learned counsel appearing for the first respondent/claimant submitted that, admittedly the FIR has been registered as against the driver of the appellant's insured vehicle. Though it is claimed that the first respondent had driven the vehicle in a rash and negligent manner, in order to prove the same, the claimant examined herself as P.W.1 and other witness was examined as P.W.2. In order to disprove the prosecution, the appellant / insurance company has not examined any independent witness.

6. He further submits that mere examination of R.W.1, Driver of the lorry and R.W.2 who is the Medical record officer cannot be said to be admissible proof to defeat the prosecution. However, considering the nature of injuries sustained by the claimant and all the relevant documents, the Tribunal has awarded a sum of Rs.4,47,972/- payable by the appellant / insurance company, which does not require any



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interference. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

8. It is discernible from Ex.P11, disability certificate issued by the Medical Board that the independent Doctor assessed the disability at 15% partial permanent disability, however, the Tribunal erred in awarding compensation under the head compensation by fixing 15% functional disability as if the disability of the claimant is functional in nature by adopting the multiplier method which cannot be acceded to.

9. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the claimant, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore, this Court is inclined to adopt percentage method to



arrive at the compensation to be given to the claimant.

10. However, considering the age and nature of injury sustained by the claimant and the extent of the disability would not really hamper the claimant from discharging his day to day, this Court fixes Rs.4000/- per percentage of disability. Therefore, the compensation awarded under the head “compensation” is modified to Rs.60,000/- (15% * 4000=60,000/-). This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Compensation	1,53,000/-	60,000/- (reduced)
2	Loss of earning for 4 months	20,000/-	20,000/-
3	Pain and suffering	30,000/-	30,000/-
4	Extra nourishment expenses	25,000/-	25,000/-
5	Attender charges	15,000/-	15,000/-
6	Medical expenses	1,80,972/-	1,80,972/-
7	Transport bills	23,000/-	23,000/-



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
8	Loss on clothing	1,000/-	1,000/-
	Total	4,47,972/-	3,54,972/-

12. Accordingly, this appeal is allowed in part and the compensation amount is deducted from **Rs.4,47,972/- to Rs.3,54,972/-** and the appellant / Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.36 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No



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Speaking order / Non-speaking order

Netru Citation Case : Yes / No

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To

1.Motor Accident Claims Tribunal (Subordinate Judge) (FAC) at Palacode.

2.The Section Officer, V.R.Section, High Court, Madras.

M.DHANDAPANI, J.

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