IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1071 of 2022
and CMP No.7843 of 2022

The Oriental Insurance Company Limited
T.P. Cell
No.115/216, Prakasam Road
Poonamallee
Chennai - 600 056. ..Appellant

.vs.

1.Sreejish

2.S.Dhanasekar

3.Popular Motor Corporation
No.1A Bye Pass Road,
Poonamallee,
Chennai - 600 056.

4.Bharti Axa General Insurance Co., Ltd.,
Metro Plaza, 2nd Floor,
No.162, Anna Salai,
Chennai - 600 002. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 06.03.2021 in MCOP No.2684 of 2012 on the file of the Motor Accident Claims Tribunal (III Judge) (FAC) Small Causes Court at Chennai.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Mr.S.P.Yuvaraj for R1
Ms.S.Sangeetha for M.Jayaraj for R4
R2 Vacated
R3 Left

JUDGMENT

The Insurance Company has filed this appeal against the Award passed by the Tribunal in MCOP No.2684 of 2012 dated 06.03.2021, questioning both the percentage of liability that was fastened against the Insurance Company and also the quantum of compensation that was fixed under various heads.

2.The case of the claimant is that on 22.02.2012 at about 20:30 hours, he was attending the fault in a vehicle that was stranded in Royapuram new over bridge and at that point of time, the offending vehicle which is the two wheeler owned by the 1st respondent was driven by a minor in a rash and negligent manner and the two wheeler hit the claimant as a result of which he sustained compound Grade II fracture both bone legs right mid 1/3rd and left distal 1/3rd. The disability was assessed by the Medical Board at 40% and it is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The claimant had added the owner of the two wheeler who is the 1st respondent as well as the owner of the goods vehicle who is the 3rd respondent and the 2nd the 4th respondents in the claim petition are the Insurance Companies in which both those vehicles are insured.

4.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that there was composite negligence, since the goods vehicle had been parked in the middle of the road and the two wheeler had also been driven in a rash and negligent manner and therefore, the liability was fixed against the 2nd respondent and the 4th respondent Insurance Companies in the ratio of 70% : 30%.

5.Having rendered the above finding, the Tribunal proceeded to fix the compensation under various heads and the total compensation was determined at Rs.10,80,607/- in the following manner:

S.No	**Compensation awarded under the head**	**Amount (in Rs.)**
1.	Towards Pain and Sufferings	50,000
2.	Towards Extra Nourishment and transport	50,000
3.	Loss of earnings	7,25,760
4.	Medical Expenses	1,71,447
5.	Loss of Amenities	50,000
6.	Attender Charges	2,400

S.No	Compensation awarded under the head	Amount (in Rs.)
7.	Damages to clothes	1,000
8.	Future Medical Expenses	30,000
	Total	**10,80,607**

6.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

7.The Insurance Company covering the two wheeler owned by the 1st respondent has filed the present appeal questioning both the percentage of liability that was fastened on the Insurance Company as well as the quantum of compensation fixed by the Tribunal.

8.Heard Ms.R.Sree Vidhya, learned counsel appearing on behalf of the appellant, Mr.S.P.Yuvaraj, learned counsel appearing on behalf of the 1st respondent and Ms.S.Sangeetha, learned counsel appearing on behalf of the 4th respondent.

9.This Court has carefully considered the submissions made on either side and also the materials available on record.

10.This Court has carefully considered the evidence of PW1 and also the rough sketch which was marked as Ex.P3 and the copy of the charge sheet which was marked as Ex.P4. It is quite clear that the vehicle under repair was stranded in the middle of the road in Royapuram new over bridge. The goods vehicle in which the claimant came by carrying the tools to repair was also parked right behind the vehicle which was under repair and it was also in the middle of the road. The two wheeler that was driven by the minor had also come in a rash and negligent manner and when the claimant was getting down from the goods vehicle, the two wheeler had dashed on him resulting in the injury. There is absolutely no indication as to whether there was any parking lot available and sufficient precaution was taken by the goods vehicle before parking the vehicle right behind the vehicle which was under repair. If the goods vehicle which was brought with the tools to undertake the repair had been parked at the corner of the road, this accident could have been avoided. Therefore, the percentage of liability on the goods vehicle must be enhanced from 30% to 40%.

11.In the light of the above discussion, the composite negligence is fixed at 60% for the offending two wheeler and 40% for the goods vehicle. Thus, the ratio of negligence is modified to 60% : 40%.

12.The next issue is with regard to the quantum of compensation that was fixed by the Tribunal.

13.The Tribunal has straight away applied the multiplier method in this case to calculate the loss of earnings. There is absolutely no discussion as to how the claimant suffered functional disability in this case. The Tribunal has assumed that since the Medical Board has assessed the permanent disability at 40%, the further earning capacity of the claimant will be affected by 40% and therefore, there will be functional disability of 40%. This finding of the Tribunal is liable to be interfered by this Court. There is no material to show that the claimant suffered any functional disability in this case. Therefore, this Court has to necessarily fix the disability compensation by adopting the per percentage method. This Court is inclined to fix Rs.4,000/- per percentage and accordingly, the compensation under the head of 'Disability' can be fixed at Rs.1,60,000/- (Rs.4000/- x 40%).

14.The Tribunal had not fixed any compensation under the head of loss of earnings, since multiplier method had been adopted for calculating the loss of earnings. Hence, separate compensation must be granted under the head of loss of earnings. Considering the fact that the claimant was a Mechanic and had undergone continuous treatment, he would have been out of work for at least six months. This Court is inclined to fix notional monthly income at Rs.8,000/-, since the accident had taken place in the year 2012. Therefore, the compensation under the head of 'Loss of earnings' can be fixed at Rs.48,000/- (Rs.8000/- x 6m).

15.The compensation fixed by the Tribunal under the head of 'Pain and Sufferings and Extra nourishment' is liable to be reduced to Rs.25,000 for each head. The compensation that has been fixed under the head of 'Loss of Amenities' is also on the higher side and the same is reduced from Rs.50,000/- to Rs.15,000/-

16.The attender charges fixed by the Tribunal is on the lower side and the same is enhanced from Rs.2,400- to Rs.15,000/-.

17.The Tribunal has not granted any compensation towards transport charges and this Court is inclined to fix the compensation at Rs.15,000/- under this head.

18.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of earnings	48,000
2.	Pain and Sufferings	25,000
3.	Extra Nourishment	25,000
4.	Transportation charges	15,000

S.No	Compensation awarded under the head	Amount (in Rs.)
5.	Medical Expenses	1,71,447
6.	Loss of amenities	15,000
7.	40% Disability (Rs.4000 x 40%)	1,60,000
8.	Attender Charges	15,000
9.	Damages to clothes	1,000
10.	Future Medical Expenses	30,000
	Total	**5,05,447**

19.The above compensation is liable to be paid with interest at the rate of 7.5% per annum.

20.This Court has fastened the liability in the ratio of 60% : 40% as against the appellant Insurance Company and the 4th respondent Insurance Company. Therefore, insofar as the appellant Insurance Company is concerned, they will be liable for payment of compensation only to the tune of 60% with interest. The balance 40% is liable to be paid by the 4th respondent Insurance Company along with interest at the rate of 7.5% per annum.

21.It is brought to the notice of this Court that the appellant Insurance Company has already deposited the compensation amount along with interest as directed by this Court when this appeal was entertained. Out of this amount, the claimant will be entitled to withdraw 60% of the compensation amount along with interest. The balance amount remaining shall be permitted to be withdrawn by the appellant Insurance Company. It is also made clear that the amount that has been paid to the claimant by the appellant Insurance Company can be recovered from the 1st respondent as was held by the Tribunal.

22.Insofar as the balance 40% compensation amount is concerned, there shall be a direction to the 4th respondent to deposit the compensation amount with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of deposit. The 4th respondent shall deposit the compensation amount (40%) along with interest, within a period of six weeks from the date of receipt of copy of this order. On such deposit, the claimant/1st respondent will be entitled to withdraw that amount also.

23.In the result, this civil miscellaneous appeals is disposed of with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

26.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

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N. ANAND VENKATESH., J

ssr

To

The Motor Accident Claims Tribunal (III Judge) (FAC) Small Causes Court,
Chennai.

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