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C.M.A.No.566 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.566 of 2023
and C.M.P.No.4846 of 2023

The Oriental Insurance Co. Ltd.,
Rep. by its Divisional Office (HUB),
Mettur Road, Parimalam Complex,
Erode – 638 001.

.. Appellant

Vs.

1.Senthil

2.Muruganantham

3.P.Venkudusamy

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the judgment and decree in M.C.O.P.No.325 of 2017 dated 10.08.2021 on the file of the Motor Accidents Claims Tribunal (Special District Judge) at Erode.

For Appellant : Mr.M.Krishnamoorthy

For R1 : Mr.S.P.Yuaraj

J U D G M E N T

The Insurance Company has filed the present appeal against the



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award passed by the Motor Accident Claims Tribunal, Special District Judge, Erode, in M.C.O.P.No.325 of 2017 dated 10.08.2021.

2.The 1st respondent / claimant filed the claim petition on the ground that on 16.03.2017, he was traveling in a two wheeler as a pillion rider and the vehicle was going at Kugalur – Pudukaraipudur road and at about 07.45 P.M., when the vehicle was going near the scene of occurrence, the offending vehicle which was also a two wheeler was driven in a rash and negligent manner and it was coming in the opposite direction and it hit the two wheeler in which the claimant was traveling as a pillion rider, as a result, the claimant was thrown away from the two wheeler and he sustained the following injuries:

“Diagnosis : RTA with

*1.Comminuted Compound Fracture Right Femur
Middle & Lower 1/3rd.*

2.Multiple lacerations over Right Knee and Thigh.

3.Lateral Meniscal injury Right Knee.”

The claimant underwent treatment as an inpatient initially from



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19.03.2017 to 15.04.2017. During this period, he underwent two surgeries. Thereafter, the claimant once again underwent treatment from 20.07.2017 to 30.07.2017. The claimant totally underwent treatment as an inpatient for 39 days. Three operations were performed. The procedure that was done to the claimant was

“1.ORIF with distal femur locking plate.

2.Bone graft over fracture site.”

It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the rider of the offending vehicle.

4.The Tribunal having rendered the above finding, proceeded to fix the total compensation at Rs.12,18,715/- under various heads as follows:



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1.	For pain and sufferings	Rs.50,000/-
2.	For attender charges	Rs.20,000/-
3.	For transportation expenses	Rs.15,000/-
4.	For extra nourishment	Rs.15,000/-
5.	For 30% partial permanent disability	Rs.8,06,400/-
6.	For medical expenses	Rs.2,62,315/-
7.	For temporary loss of income	Rs.50,000/-
	Total Compensation	Rs.12,18,715/-

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

6.The Insurance Company has filed the present appeal questioning the quantum of compensation fixed by the Tribunal.

7.Heard the learned counsel for the appellant and the learned counsel for the 1st respondent.

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



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9.This Court has also carefully gone through the award passed by the Tribunal.

10.The main ground of attack by the learned counsel for the appellant is with regard to the compensation fixed by the Tribunal under the head of disability / loss of earning power. It was contended that the Medical Board had assessed 30% partial permanent disability and there was no proof to establish that the claimant suffered from any functional disability resulting in loss of earning capacity and therefore, it was argued that the Tribunal ought not to have applied the multiplier method.

11.The injuries sustained by the claimant and the treatment underwent have already been mentioned *supra*. On going through the disability certificate marked as Ex.C1, it is seen that the Medical Board has assessed 30% partial permanent disability. The case of the claimant is that he was working as a Spinner in an Yarn Unit. Whenever a claim is made for loss of earning capacity, the Court must see the injuries sustained, the consequences of such injuries, the avocation of the injured and the effect of the injuries on the earning capacity of the injured



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undertaking that avocation. It is therefore clear that it is a matter of evidence to establish that the injured is suffering from a functional disability resulting in loss of earning capacity. It is definitely not a matter of assumption and the Court is not an expert to come to a conclusion that the injuries would have resulted in loss of earning capacity. It is not easy to come to such a conclusion in every case, unless the facts of the case are very apparent which will not require any further assistance from an expert.

12.It is true that the claimant suffered from comminuted compound fracture on the right femur. That by itself, cannot be a ground to assume that the claimant suffered from functional disability. This is in view of the fact that Ex.C1 / disability certificate does not talk anything adverse on the consequences on the injuries sustained by the claimant. It merely states that the disability has been assessed at 30% partial permanent disability. Therefore, the Tribunal without satisfying itself that the claimant suffered from functional disability, ought not to have applied the multiplier method.



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13.In the light of the above discussion, the compensation fixed by the Tribunal under the head of disability by applying multiplier method is interfered and this Court is inclined to adopt the per percentage method. Accordingly, the compensation under the head of disability is fixed at Rs.2,10,000/- (30% X Rs.7,000/-).

14.Considering the nature of injuries, the treatment undergone as inpatient, the operations underwent by the claimant and the pain and sufferings, this Court is inclined to enhance the compensation under the head of pain and sufferings, attender charges, transportation charges and extra nourishment to Rs.1,00,000/-, Rs.25,000/-, Rs.30,000/- and Rs.75,000/- respectively.

15.The claimant would not have able to go for any regular work atleast for seven months in this case. Therefore, this Court is inclined to fix a lumpsum amount of Rs.1,00,000/- under the head of loss of income.

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



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1.	For pain and sufferings	Rs.1,00,000/-
2.	For attender charges	Rs.25,000/-
3.	For transportation expenses	Rs.30,000/-
4.	For extra nourishment	Rs.75,000/-
5.	For 30% partial permanent disability	Rs.2,10,000/-
6.	For medical expenses	Rs.2,62,315/-
7.	For loss of income	Rs.1,00,000/-
	Total Compensation	Rs.8,02,315/-

17.The compensation awarded by the Tribunal at Rs.12,18,715/- is hereby reduced to Rs.8,02,315/-. When this appeal was entertained, the appellant / Insurance Company was directed to deposit 50% of the compensation amount along with interest and costs. Accordingly, the amount has also been deposited. Hence, the balance amount together with interest at 7.5% per annum from the date of claim petition till the date of deposit shall be deposited by the appellant / Insurance Company within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent / claimant is entitled to withdraw the same. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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18.In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Special District Judge ,
Motor Accident Claims Tribunal,
Erode.

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

N.ANAND VENKATESH, J.

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