



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

Civil Miscellaneous Appeal No.319 of 2020
CMP.No.2134 of 2020

The New India Assurance Company Limited
Having Its Divisional Office
Door No.1360, EVN Road
Amman Complex, 1st Floor
Erode – 638 011.

... Appellant

Vs.

1.S.Dhandapani
2.S.Pugalenth (Driver cum Owner)

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.06.2018 made in MCOP. No.400 of 2017 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge) Erode.

For Appellant : M/s.R.Sreevidhya

For Respondents : R1 – No appearance
R2 - Unclaimed

J U D G M E N T

The appellant/Insurance company has come forward with this appeal, challenging the decree and judgment passed in MCOP.No.400 of



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2017 dated 21.06.2018 on the file of the Motor Accident Claims Tribunal (Special Sub Judge) Erode District contending that the amount of compensation awarded under different heads are excessive.

2. Brief facts which are necessary for disposal of this appeal are as follows:- On 22.12.2016 at 8.10am the first respondent was riding the motorcycle bearing Reg.No.TN33 BH 1957 on the Erode EVN Road, from north to south and while proceeding near Maragaathavalli Petrol Bunk, the second respondent drove the Mahendra School, Maxi Cab van, bearing Reg.No.TN40 W 3969, insured with the appellant Insurance Company in a rash and negligent manner and hit the 1st respondent's motorcycle. Due to the impact, the 1st respondent sustained bone fracture and grievous head injuries. Immediately, R1 was taken to Government Hospital, Erode where he had taken first aid and thereafter, he was admitted as inpatient at Erode Trust Hospital. Thereafter, stating that the accident was occurred due to the rash and negligent driving of the second respondent, the first respondent has filed petition under Section 166 M.V.Act, claiming compensation of Rs.20,30,000/- before



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the Motor Accidents Claims Tribunal, Erode and the same was taken on file in MCOP. No.400 of 2017.

3. Before the Tribunal, in order to prove the case, the first respondent/claimant has examined two witnesses viz., PW1 and PW2 and marked Exs.P1 to P23, On the side of the appellant/second respondent, no witness was examined and no document was marked. The Tribunal, considering the pleadings, oral and documentary evidence, allowed the petition in part and awarded a sum of Rs.3,14,300/- as compensation to the claimant under various heads. Aggrieved by the said award dated 21.06.2018, the appellant/insurance company has filed this appeal before this Court for reconsideration of the compensation awarded by the Tribunal.

4. The learned counsel for the appellant/insurance company would submit that admittedly the present appeal has been filed questioning quantum arrived at by the Tribunal. The doctor at Government Hospital, Omalur assessed the disability at 20% for which the Tribunal has awarded a sum of Rs.1,78,200/- for permanent disability by adopting the



multiplier method. The multiplier method ought to have been adopted only in the case of functional disability. In the present case, the first respondent claimed that he engaged himself in Pandal work and therefore, there is no chance for loss of earning capacity. Therefore, this Court may recall the same.

5. Learned counsel added that on perusal of the Ex.19/Disability Certificate, it is only partial permanent disability and no material or oral evidence to prove that the first respondent/claimant suffered functional disability. In the absence of functional disability, the compensation awarded by Tribunal by adopting the multiplier is not sustainable one. Hence, on this ground, the award is liable to be set aside.

6. The learned counsel for the first respondent/claimant would submit that the accident had occurred in a rash and negligent driving of driver of the Maxi Cab van which was insured with the appellant/insurance company. The first respondent is a pandal worker and he was earning at Rs.15,000/- per month. The Doctor who issued Ex.P19-disability certificate has assessed the disability at 22% finding



that this is a fit case to calculate the loss of income by using multiplier method, the Tribunal awarded a sum of Rs.1,78,200/- towards loss of earning and the said amount is reasonable and no interference is called for. It is also submitted that the total compensation awarded by the Tribunal is a just, fair and reasonable and hence, the same does not require any interference by this Court.

7. Heard the learned counsel for the appellant/insurance company and the learned counsel for R1 and also perused the materials available on record. Though the name of the first respondent is printed in the cause list, none appeared on behalf of him.

8. The present appeal has been filed primarily questioning the amount calculated in respect of loss of earning power.

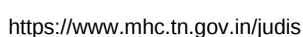
9. The claimant was inpatient in the hospital from 22.12.2016 to 02.01.2017. For the injuries sustained, PW2 Doctor assessed the disability at 22% and the Tribunal has reduced the disability to 20% and adopted the multiplier method and awarded a sum of Rs.1,78,200/-



towards loss of earning power, which is highly excessive. In view of the factual scenario of the present case, it would be appropriate to take the disability at 22% and fix the compensation at Rs.1,10,000/- (22% x Rs.5000/-) by fixing Rs.5000/- per percentage of disability by applying the ratio laid down by the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar*. It is clear that the amounts awarded by the Tribunal under the other heads appear to be just and reasonable. Thus, the total compensation awarded by the Tribunal is modified as follows:

Heads	Amount awarded by Tribunal	Modified Award Amount
Loss of Income	15,000/-	15,000/-
Transport Expenses	2,000/-	2,000/-
Extra Nourishment	6,000/-	6,000/-
Damages for clothes and Articles	500/-	500/-
Medical Expenses	62,600/-	62,600/-
Pain and Sufferings	50,000/-	50,000/-
Disability and loss of earning power	1,78,200/-	1,10,000
Total	Rs.3,14,300/-	Rs.2,46,100

10. In the result, this appeal is partly allowed and the order of the Tribunal in MCOP. No.400 of 2017 dated 21.06.2018 is modified and the amount of compensation awarded by the Tribunal is reduced to Rs.2,46,100/- (Rupees two lakh forty six thousand and one hundred only)





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M.DHANDAPANI,J.

msv

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