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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A(MD)No.302 of 2024
and
C.M.P(MD)No.4066 of 2024

M/s.New India Assurance Company Limited,
Reg., Office & Head Office Building,
No.87, M.G. Road Fort, Mumbai. ... Appellant/2nd Respondent

-Vs-

1.Rajesh Kannan ... 1st Respondent/Petitioner

2.Gopalakrishnan ...2nd Respondent/ 1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, as against the award dated 24.11.2023 passed in MCOP No.1230 of 2014 by the learned Motor Accident Claims Tribunal Authority / Special Subordinate Judge, Tiruchirappalli.

For Appellant : Mr.J.S.Murali
For R1 : Mr.K.Kalimuthu
For R2 : No appearance

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the award dated 24.11.2023 passed in M.C.O.P.No.1230 of 2014 by the Motor Accident Claims Tribunal, Special Sub-Court, Tiruchirappalli, by the Insurance Company.

2.The case as set out in the claim petition is stated in brief:

On 26.09.2013 at about 11.00 a.m., while the petitioner was riding his two wheeler bearing Registration No.TN 47 X 3190 with two pillions(Shanmugasundaram and Santhakumar) along Karur to Pettavaithalai Main Road from West to East direction at a normal speed near AKM Hospital, a van bearing Registration No.TN 42 E 8685, which belongs to the first respondent and insured with the second respondent came at a high speed and in a rash and negligent manner from the opposite direction and hit on the petitioner's two wheeler. Due to the said impact, the petitioner sustained severe head injuries besides injuries over both legs. He was taken to Atlas Hospital, Trichy and he was in admission as inpatient for about two months. He was working as an Accountant in Saw Mill and was earning Rs.15,000/- per month. Due to the said accident,

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he is unable to do any work as he did before the accident. The accident occurred due to the rash and negligent driving of the first respondent's van driver as mentioned supra. The first respondent is the owner of the said vehicle and the second respondent/Insurance Company, who is the Insurer of the said vehicle jointly and severally liable to pay compensation to the claimant herein.

3.Per contra, detailed counter has been filed by the second respondent to the effect that the accident occurred due to the claimant drove the vehicle with two pillions and he dashed upon the first respondent van. The claimant is put to strict proof of the nature of injuries, period of treatment, age, avocation and income etc.

4.At trial, the claimant has examined himself as P.W.1 and through him 6 documents were marked. On the side of the respondent, no evidence was let in. Ex.C.1 and Ex.C.2 are the disability certificates issued by the Karur Medical Board.

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5.Upon consideration, the Tribunal held that the question of contributory negligence was not prove by the Insurance Company and the claimant. As per the Cost Inflation Index, the income of the claimant is fixed at Rs.10,100/- per month. For future prospects 40% was added towards the income and the income was arrived at Rs.14140/-. By applying the multiplier '16' for 30% disability, the loss of income was arrived at Rs.8,14,464/-(14140 x 12 x 16 x 30/100).

6.For medical expenses, by relying upon Ex.P.3-Medical Receipts, an amount of Rs.1,66,787/- was granted. For treatment period, the loss of income for a period of four months is Rs.40,400/- was granted. For loss of amenities and for loss of expectation of life, a sum of Rs.50,000/- under each head was granted. For attendant charges and for transportation expenses, an amount of Rs.15,000/- under each head was awarded. For pain and sufferings, a sum of Rs.80,000/- was awarded. For extra nourishment, a sum of Rs.20,000/- and for damage to clothes a sum of Rs. 2,000/- and for future medical expenses, a sum of Rs.30,000/- was granted. In all, a sum of Rs.12,83,651/- was awarded by the Tribunal as compensation.

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7.The appeal is focused on the question of negligence as well as on quantum.

8.Mr.J.S.Murali, learned counsel appearing for the appellant would strenuously argue that the claimant, who was the rider of the two wheeler, travelled with two pillions and thereby invited the accident and he has also contributed to the accident and the same was not considered by the Tribunal. It is his further argument that it is the claimant who invited the accident and not the driver of the first respondent's vehicle. Therefore, the Insurance Company is not liable to pay compensation.

9.As regards the quantum, the Tribunal has adopted the multiplier method in the injury case is totally incorrect. As he was said to be an accountant in a Saw Mill, the income fixed by the Tribunal is on the higher side.

10.On the other hand, the learned counsel for the respondent would vehemently contend that 29 years old claimant, who suffered serious head injuries and he was hospitalized for a long period and his disability was

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assessed at 42% and the Tribunal has abruptly reduced the disability at 30%. As he has suffered head injury, he is not in a position to work as he worked before, since he suffered with consequences of the head injuries, head ache, etc. The claimant was working as an Accountant in a Saw Mill and earning a sum of Rs.10,100/- and the Tribunal has fixed his income by adding future prospects at Rs.14,140/- and the same is reasonable. Based on the injuries sustained by the claimant, the amounts awarded under the other heads are acceptable and reasonable and hence, it needs no interference.

11.It is the evidence of P.W.1, that on 26.09.2013 at about 11.00 a.m., while he was riding a two wheeler bearing Registration No.TN 47 X 3190 with two pillion riders along Karur to Pettavaithalai Main Road from west to east direction at normal speed near AKMC Hospital, the first respondent's Van driver (TN 42 E 8685) came in a rash and negligent manner from the opposite direction and hit against his two wheeler. On the side of the second respondent, no eye witness was examined. During his cross-examination also, nothing disadvantageous to P.W.1, was elicited by the Insurance Company.

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12.The learned counsel for the appellant would stoutly contend that the claimant drove the two wheeler with two pillions. It shows that he too invited the accident, as he did find difficult to balance the vehicle with two pillions. As per the MV Act, he is permitted to drive with one pillion. It appears that one pillion was 9 years old and other pillion was his elder brother. It is pertinent to note that the van instead of proceeding from west to east in the northern side, it came to southern side and hit on the two wheeler and the claimant was thrown out and 9 years old boy succumbed to the injuries. When the rider of motor cycle rides in the more than one pillion, it cannot be presented that he negligently drives the vehicle. In what way he contributes to the accident was not elicited from P.W.1 through his cross examination. Therefore, relying upon the evidence of P.W.1 it is pellucid that because the rash and negligent driving of the van driver, the accident occurred and the Tribunal has fixed the liability upon the driver of the van cannot be found fault with.

13.The second ground put-forth is that a change in the quantum. It has come on record through the evidence of P.W.1 that at the relevant point of time, he was working as an Accountant in a Saw Mill and earning a

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sum of Rs.15,000/-. It is his further evidence that on account of the accident, he sustained severe injuries and he was inpatient for about two months and thereafter, he was not in a position to go for any job for two years. On account of the accident, the claimant suffers severe head injuries with lacerated injuries in both legs. CT Facial Bone is follows:

> *"Fracture of the left external auditory canal anterior wall and posterior wall of left TMJ glenoid fossa. Bilateral glenoid fossa shows small hemarthroses. Rest of the facial bones intact. Bilateral hemosinus. Surgical emphysema in bilateral parapharyngeal space".*

Therefore, he has suffered head injury and fracture of the filial portion coupled with fracture of temporal portion and pelvin fracture.

14.As per Ex.C.1 & Ex.C.2- the Disability Certificates, disability was assessed by the Medical Board at 15% and for the fracture over the head, the disability was assessed at 27%, in all 42%. The Tribunal has put together and fixed the functional disability at 30%. It is the evidence of P.W. 1 that on account of the accident, he sustained severe head injuries and was hospitalized for two months and thereafter, almost for two years he was bedridden, he was suffering from head ache etc.

15.Under what circumstances, in an injury case, multiplier method

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can be invoked is discussed by the Hon'ble Supreme Court in ***Raj Kumar vs Ajay Kumar*** reported in ***[(2011) 1 SCC 343].*** The principles which are summarized by the Apex Court in the said case is given hereunder:

> *"(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.*
>
> *(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).*
>
> *(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.*
>
> *(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."*

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16.Upon consideration, the evidence of P.W.1 coupled with the Medical Records and Disability Certificate fixing of functional disability at 30% cannot be found fault with.

17.As per the treatment records and the driving license (Ex.P.3) and Aadar Card (Ex.P.5), his age is fixed at 34 years at the relevant point of time. Though it was put-forth that the petitioner was working as an Accountant in a Saw Mill and earning a sum of Rs.15,000/- per month, no proof is shown to substantiate the same. The date of the accident is 26.09.2013. The Tribunal has fixed his salary at Rs.10,100/- which is quite reasonable. Relying upon the evidence of P.W.1, due to the fracture of facial bones, he is not in a position to work as he did before. In consideration of the same, the Tribunal has invoked multiplier method cannot be found fault with. As held by the Apex Court in ***National Insurance Company Vs Pranay Sethi and others***, reported in ***2013(1)TNMAC 481 SC,*** the details of future prospects have been standardized and for the persons below 40 years 40% has to be added along with income as future prospects.

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18.As regards the multiplier to be adopted as held by the Apex Court in ***Sarala Varma and others Vs Delhi Transport Corporation and another***, reported in ***2009(2) TNMAC 1,*** for the age group of persons from 31 to 35, the relevant multiplier to be adopted is '16m'. For medical expenses, by relying upon Ex.P.3-Medical Bills, an amount of Rs.1,66,787/- is granted. For injury case, the Tribunal has calculated the loss of income by multiplier method. In that case, again for loss of income, during the treatment period, an amount of Rs.40,400/- was ordered, which is incorrect.

19.Considering the nature of injury suffered and the effects upon the claimant, the amounts granted under various heads as mentioned supra are reasonable and the same are confirmed. As regards the other heads, as the amounts granted under various heads appears to be reasonable and acceptable. This Court does not find no good reason to interfere with. The compensation awarded by the Tribunal is reworked and tabulated hereunder:

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S. No	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Disability Compensation (Grievous Injury)	Rs.8,14,464/-	Rs.8,14,464/-	Confirmed
2	For Medical Bills	Rs.1,66,787/-	Rs.1,66,787/-	Confirmed
3	For loss of Income	Rs.40,400/-	Rs.40,400/-	Confirmed
4	For Loss of Amenities	Rs.50,000/-	Rs.50,000/-	Confirmed
5	For loss of expectation of life	Rs.50,000/-	Rs.50,000/-	Confirmed
6	For attender charges	Rs.15,000/-	Rs.15,000/-	Confirmed
7	For pain and sufferings	Rs.80,000/-	Rs.80,000/-	Confirmed
8.	For Transportation charges	Rs.15,000/-	Rs.15,000/-	Confirmed
9.	For Extra Nourishment	Rs.20,000-	Rs.20,000/-	Confirmed
10.	For Damages to Clothes and other valuables	Rs.2,000/-	Rs.2,000/-	Confirmed
11.	For Future Medical Expenses	Rs.30,000/-	Rs.30,000/-	Confirmed
	Total	Rs.12,83,651/-	Rs.12,83,651/-	
	Rounded off as		Rs.12,83,600/-	

20. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed.

(ii) The appellant/Insurance Company is directed to deposit the compensation amount i.e., Rs.12,83,600/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No. 1230 of 2014 on the file of Motor Accidents Claims Tribunal /Special

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Subordinate Judge, Tiruchirappalli, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the first respondent/claimant is permitted to withdraw the award amount along with interest and costs as apportioned by the Tribunal, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal.

(iv)No costs. Consequently, connected miscellaneous petition is closed.

31.01.2025

NCC:Yes/No
Index:Yes/No
Internet::Yes/No

R. KALAIMATHI,J.

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To
1.The Motor Accident Claims Tribunal Authority /
Special Subordinate Judge,

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