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**(2013) 09 MAD CK 0129**

**In the Madras High Court**

**Case No :** C.M.A. No. 3954 of 2005 and C.M.P. No. 19534 of 2005

The Branch Manager, The New India Assurance Co. Ltd.

APPELLANT

Vs

Ramdas and Dr. M.S. Jayaraj

RESPONDENT

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**Date of Decision :** 10-09-2013

**Acts Referred:**

**Citation :** (2013) 09 MAD CK 0129

**Hon'ble Judges :** C.S. Karnan, J

**Bench :** Single Bench

**Advocate :** T.A. Srinivasan for Sree and Associates, for the Appellant; J. Manikkam for R1, for the Respondent

**Final Decision :** Partly Allowed

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## **Judgement**

C.S. Karnan, J.—The appellant/2nd respondent has preferred the present appeal in C.M.A. No. 3954 of 2005, against the judgment and

decree passed in M.C.O.P. No. 20 of 2004, on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Gopichettipalayam. The short

facts of the case are as follows:-

The petitioner has filed the claim in M.C.O.P. No. 20 of 2004, claiming compensation of a sum of Rs. 4,00,000/- from the respondents for the

injuries sustained by him in a Motor Vehicle Accident. It was submitted that on 22.06.2003, at about 6.30 p.m., when the petitioner was travelling

in an Auto and when the Auto was stopped at the junction of Kasturirangan and Cathedral road, the 1st respondent's car bearing Registration No.

TN-07-F-2859, driven at a high speed and in a rash and negligent manner dashed against the left side body of the Auto and caused the accident.

As a result, the petitioner sustained injuries. Hence, he has filed the claim

against the 1st and 2nd respondents, who are the owner and insurer of the car bearing Registration No. TN-07-F-2859.

2. The 1st respondent in his counter has submitted that on 22.06.2003, at about 6.00 p.m., he had parked his car, as usual near the Rajasthan Art Gallery on the Cathedral road. As the Traffic police had asked him to park the car near the petrol bunk, as the Chief Minister was on her way to the ADMK office through the said road, he had driven the car on the Kasturirangan road and at that point of time, the Auto coming from west to east and driven by its driver at a high speed and in a rash and negligent manner, had tried to drive the auto between the gap between the concrete barrier and the car and consequently dashed it against the bumper of the car and caused the accident. It was submitted that as the accident was caused only by the negligence of the driver of the Auto, only the owner and driver of the Auto bearing Registration No. TN-07-M-0362 are liable to pay compensation.

3. The 2nd respondent, in his counter has submitted that the accident was caused only due to negligence of the driver of the Auto and not due to any negligence on the part of the driver of the Car. The averments in the claim regarding age, income, occupation, medical treatment and disability was also not admitted.

4. The Motor Accidents Claims Tribunal framed two issues for consideration in the case namely: (1) Due to whose negligence was the accident caused? and (2) Is the petitioner entitled to get compensation? If so, what is the quantum?

5. On the petitioner's side, two witnesses were examined and 16 documents were marked as Exhibits P1 to P16 namely: Ex. P1-Copy of F.I.R.; Ex. P2-Copy of rough sketch; Ex. P3-Copy of Motor Vehicle Inspector's report; Ex. P4-Copy of wound certificate; Ex. P5-Copy of charge sheet; Ex. P6-Salary certificate; Ex. P7-X-rays; Ex. P8-Scan; Ex. P9-Receipt issued by Dr. Siva; Ex. P10-Discharge summary; Ex. P11-Lab receipts; Ex. P12-Receipt given by travels; Ex. P13-Medical treatment records; Ex. P14-Discharge summary; Ex. P15-Disability certificate; and Ex. P16-X-rays. On the respondents' side, no witness was examined and no document was marked.

6. PW1, the petitioner had adduced evidence which is corroborative of the

statements made in the claim regarding manner of accident and in support of his evidence, he had marked Exhibits P1 to P5.

7. On scrutiny of Exhibits P1 & P5, it is seen that the F.I.R. and Charge sheet had been filed against the 1st respondent for rash and negligent

driving. On scrutiny of Ex. P3, it is seen that the 1st respondent had driven the car bearing Registration No. TN-07-F-2859; On scrutiny of Ex.

17, it is seen that the car bearing Registration No. TN-07-F-2859 had been insured with the 2nd respondent, at the time of accident. Hence, the

Tribunal on scrutiny of oral and documentary evidence held that the accident had been caused by the rash and negligent driving by the 1st respondent.

8. PW1 had further adduced evidence that due to the accident, he had sustained injuries on his left shoulder, cheek, leg, hand and hip and that he

was admitted at Ashwin Kavuntharya Research Centre initially and subsequently took treatment at MIOT Hospital, in the I.C.U. and later on at

Gopi Thatchin Hospital. He deposed that prior to the accident, he was working as the Branch Manager in Oriental Insurance Company and

earning Rs. 20,369/- per month and was aged 45 years and in support of his evidence he had marked Exhibits P6 to P14.

9. The Tribunal, on scrutiny of Ex. P6, observed that the petitioner was earning Rs. 20,369/- per month and is also still continuing to work in the

same post. Hence, the Tribunal held that the income of the petitioner for accession loss of earning, could be taken as only Rs. 4,500/- per month.

10. PW2, Doctor had adduced evidence, that he had examined the petitioner and found that the petitioner is not able to move his left shoulder and

hand and that he has difficulty in lifting weights and in driving two and four wheelers. He deposed that the petitioner experiences giddiness

occasionally and deposed that the petitioner had sustained 40% disability and in support of his evidence, he had marked Ex. P15-Disability

certificate and Ex. P16-X-rays.

11. The Tribunal, on considering that the petitioner was aged 45 years as per Ex. P4 and on adopting a multiplier of 13, awarded a sum of Rs.

2,80,800/-( $4,500 \times 40 / 100 \times 12 \times 13$ ) as compensation under the head of loss of income due to disability of 40%; Rs. 4,000/- was awarded for

medical expenses as per medical bills marked as Ex. P9; Rs. 5,000/- was

awarded for pain and suffering; Rs. 2,000/- was awarded for nutrition and Rs. 10,000/- was awarded for transport expenses as per bills marked as Ex. P12. In total, the Tribunal awarded a sum of Rs. 3,01,800/- as compensation to the petitioner and directed the respondents to jointly and severally pay the said sum together with interest at the rate of 6% per annum from the date of filing the claim till date of payment of compensation, with costs, within a period of one month from the date of its order.

12. Aggrieved by the award passed by the Tribunal, the 2nd respondent/The New India Assurance Company Limited, Adyar, Chennai-20 has

preferred the present appeal. The learned counsel for the appellant has contended in his appeal that the Tribunal erred in adopting multiplier

method under Sec. 163-A, which can be invoked only when the disability was assessed as per Schedule-1 of W.C. Act and that too, it can be

applied only in respect of those persons, whose salary does not exceed Rs. 3,500/- per month and as such the award is liable to be set aside on

this ground alone. It was contended that the Tribunal failed to note that as per Ex. P5, the charge sheet, it is clearly seen that the nature of injuries

sustained by claimant in simple in nature. It was contended that the award of Rs. 2,80,800/- granted under the head of loss of income is

unsustainable in law as the claimant is still continuing in his job after one month's leave and as such the genuineness of disability spoken by PW2 is

under scrutiny. It was contended that the Tribunal erred in adopting multiplier method and also failed to consider that the fact of the accident was

not established through any independent witness. Hence, it was prayed to set aside the award passed by the Tribunal.

13. The very competent counsel for the claimant submits that the criminal case had been levelled against the driver of the car and the said car had

been insured with the appellant herein. The claimant had sustained 40% disability and he was working as the Branch Manager of Oriental

Insurance Company. After the accident, he is unable to attend his work for long periods as he had sustained grievous injuries on his chin, leg,

shoulder, hand and hip. He underwent treatment at Kavuntharya Research Centre and MIOT Hospital besides Gopi Thatchin Hospital. Therefore,

considering all these aspects, the Tribunal had granted the said compensation.

14. On verifying the facts and circumstances of the case and arguments

advanced by the learned counsel on either side and on scrutinising the impugned award of the Tribunal, this Court does not find any discrepancy in the conclusions arrived at regarding negligence and liability. However, the Tribunal had granted compensation of a sum of Rs. 2,80,800/- under the head of loss of earning, by adopting multiplier method which is not appropriate. Therefore, this Court reassesses the compensation as follows:-

Rs. 80,000/- towards disability; Rs. 4,000/- for medical expenses; Rs. 15,000/- towards pain and suffering; Rs. 15,000/- towards transport; Rs. 10,000/- towards nutrition; Rs. 10,000/- towards attender charges; Rs. 40,000/- towards loss of earning during medical treatment and convalescence period and Rs. 30,000/- towards loss of amenities and loss of comfort. In total, this Court awards Rs. 2,04,000/- as compensation, as it is found to be appropriate in the instant case. The rate of interest is fixed at 7.5% per annum instead of 6% per annum. Therefore, this Court directs the appellant to deposit a sum of Rs. 2,04,000/- with interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation.

15. As per this Court records, it is seen that the appellant had deposited the entire compensation amount with interest. Now, the claimant is at liberty to withdraw the modified compensation as per this Court order, lying in the credit of M.C.O.P. No. 20 of 2004, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gopichettipalayam, after filing a memo along with a copy of this order, subject to withdrawals made, if any, by the claimant, as per this Court's earlier order. Likewise, the appellant is at liberty to withdraw the excess compensation amount, after filing a memo. In the result, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed in M.C.O.P. No. 20 of 2004, dated 04.02.2005, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Gopichettipalayam, is modified. No costs. Consequently, connected miscellaneous petition is closed.