



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.12.2017

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.875 of 2015

United India Insurance Co. Ltd.,
represented by its Branch Manager,
254, Goods Shed Street,
Madurai - 625 001.

... Appellant/2nd respondent

Vs.

1.Pl.Ramanathan

... 1st Respondent / Petitioner

2.M.Abdul Kasim
(R-2 Exparte before Tribunal)

... 2nd Respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2014 made in M.C.O.P.No.1624 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai.

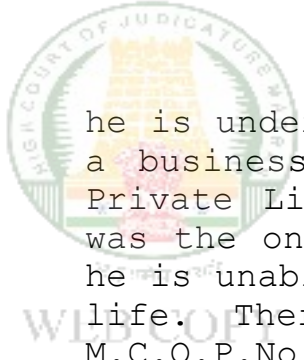
For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.K.Karthick

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the United India Insurance Company against the award passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Madurai in M.C.O.P.No.1624 of 2012, dated 11.11.2014.

2. The brief facts of the case is as follows:

It is a case of injury took place on 09.02.2011 at about 08.00 p.m., when the first respondent/petitioner was travelling as a pillion rider in his brother's two wheeler viz., Honda Activa bearing Registration No.TN 58 R 0583 from Madurai Andalpuram to Periyar Bus Stand with slow speed keeping the left side of the road, near T.P.K.Road, a TATA Sumo Car bearing Registration No.TN-59-Q-3305 belonging to the second respondent came in a rash and negligent manner and dashed against the first respondent's brother vehicle. Due to the said impact, the first respondent and his brother sustained injuries all over the body. Immediately, the first respondent/petitioner was admitted in Devadoss Multi Speciality Hospital, Madurai, on 09.02.2011 as in-patient and took treatment. Thereafter, he was discharged on 14.02.2011, but still



he is under treatment and medical care. The petitioner was running a business under the name and style of Sri Krishna Chit Funds Private Limited and also running a Pawn Broking business and he was the only bread winner of his family before the accident. Now, he is unable to do his own work and he is suffering for day-to-day life. Therefore, the first respondent filed a petition in M.C.O.P.No.1624 of 2012 before the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai, claiming a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, on the side of the claimant, 3 witnesses viz., P.Ws.1 to 3 were examined and 12 documents viz., Exs.P1 to P12 were marked and Ex.X1 document also marked. On the side of the respondents, no document was marked and no witness was examined.

4. The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel appearing on either side and also appreciating the evidence on record, held that the accident had occurred only due to the rash and negligent driving of the driver of the second respondent vehicle and directed the appellant/Insurance Company to pay a sum of Rs.3,36,790/- as compensation with interest at the rate of 7.5%. Against which, the appellant/Insurance Company has filed the present appeal by questioning the quantum of compensation.

5. The learned counsel appearing for the appellant/Insurance Company would submit that the Tribunal has awarded compensation under the head of 'future loss of earning power' and also under the head of 'loss of earning power' without understanding that both are one and the same. He would further submit that the Tribunal has wrongly awarded for future medical expenses without any evidence by the doctor suggesting the claimant to undergo any surgery for removal of the implants. He would also submit that the accident had occurred only due to the negligence on the part of the rider of the two wheeler. Therefore, he seeks interference of this Court to the award passed by the Tribunal.

6. The learned counsel appearing for the first respondent/claimant would submit that the Tribunal awarded only Rs.1000/- for each percentage of disability, which is very low. As per the judgment of this Court in *National Insurance Company Limited v. G.Ramesh and another* reported in 2013 (2) TN MAC 583, a sum of Rs.3,000/- has to be awarded for 1% disability.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and also perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

8. As rightly contended by the learned counsel for the appellant, when compensation of Rs.1,00,000/- under the head 'loss

of earning power' and Rs.25,000/- under the head 'future loss of earning power' has been given, the Tribunal ought not to have awarded compensation of Rs.59,000/- under the separate head 'loss of income on account of disability' as it amounts to double compensation. Hence, the compensation awarded under the heads 'loss of earning power' and 'future loss of earning power' is set aside. Perusal of the impugned award shows that a sum of Rs.1,000/- alone has been given for each percentage of disability. In this case, the injured claimant has sustained 59% disability as certified in Ex.P.11 - Disability Certificate. As per the judgment reported in 2013 (2) TN MAC 583 (NATIONAL INSURANCE Co. Ltd., v. G.RAMESH), Rs.3,000/- should be awarded for each percentage of disability. In my considered opinion, ends of justice would be met by awarding Rs.3,000/- for each percentage of disability applying the said judgment and accordingly, a sum of Rs.1,77,000/- (Rs.3,000 x 59) is awarded under the head 'partial permanent disability'. In all other heads, the award of the Tribunal stands confirmed.

9. After modification, the total compensation is reduced from Rs.3,36,790/- to Rs.3,29,790/- in the following manner:

S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or deleted
1.	For partial permanent disability	59,000	1,77,000	enhanced
2.	Medical Bills	88,790/-	88,790/-	Confirmed
3.	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Transport to Hospital	2,000/-	2,000/-	Confirmed
5.	Damages to clothes and articles	2,000/-	2,000/-	Confirmed
6.	Future medical treatment	25,000/-	25,000/-	confirmed
7.	Pain and Suffering	25,000/-	25,000/-	Confirmed
8.	Future loss of earning power	25,000/-	-	Set aside



9.	Loss of earning power	1,00,000	-	Set aside
	Total	Rs.3,36,790	Rs.3,29,790	By reducing a sum of Rs.7,000/-

10. The appellant/Insurance Company is directed to deposit the entire award amount, less the amount if any already deposited, with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of copy of this judgment. On such deposit being made, the first respondent/claimant is entitled to withdraw the entire award amount along with proportionate interest and costs, without filing any formal petition before the Court below.

11. In the result, the Civil Miscellaneous Appeal is partly allowed and the award dated 11.11.2014 made in M.C.O.P.No.1624 of 2012 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Madurai, is hereby modified. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Motor Accidents Claims Tribunal
(The Court of the Chief Judicial Magistrate),
Madurai.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(2 COPIES)**

+1cc to Mr.C.JAWAHAR RAVINDRAN, Advocate, SR.No. 93384

+1cc to Mr.K.KARTHICK, Advocate, SR.No. 93430

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