



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 23.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.1164 of 2013
and
M.P No.1 of 2013

National Insurance Co. Ltd.,
Branch Manager
Branch Office
No.304, Bangalore Road
Krishnagiri.

... Appellant/2nd Respondent

Vs.

1. Nachiyappan
2. G.Chakkaravarthy

...1st Respondent/Claimant
...2nd Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 04.03.2005 passed in M.C.O.P.No.726 of 2003 by the Subordinate Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.S.Arunkumar
For Respondents : Mr.K.Prasanna for R1
for M/s.M.Sriram
Notice unserved to R2

J U D G M E N T

The appellant/Insurance Company has filed the instant appeal before this Court on the ground of quantum alone.

2. The claimant/first respondent has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 10.04.2002.

3. The brief case of the claimants is as follows:
On 10.04.2002, at about 7.30 p.m, while the claimant was proceeding in his bicycle on the extreme side of the road, near newly builded school building i.e at Nadusalai to Chinnakothur Road, a speedy mini lorry bearing Registration No.KA 01 5042 was driven by its driver in a rash and negligent manner and dashed behind the petitioner and his cycle and



thereby, the claimant sustained injuries over his head shoulder and loss of teeth. According to the claimant, the rash and negligent driving of the driver of the mini lorry was the cause of accident and since the first respondent/ owner of the vehicle insured his mini lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the appellant/ insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and the doctor were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P6 were marked. No oral or documentary evidence was adduced on the side of the second respondent. The first respondent remained exparte.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,65,000/- as compensation to the claimant under various heads as extracted hereunder.

S1 No	Heads	Amount in Rs.
1	For the injuries sustained by the claimant	80,000
2	Pain & suffering	40,000
3	Permanent disability	50,000
4	Loss of future earning	30,000
5	Medical Expenses	40,000
6	Future Medical Expenses	5,000
7	Extra Nourishment	5,000
8	Transport	5,000
9	Future loss of earning	10,000
	Total	2,65,000

Aggrieved over the same, the Insurance Company has filed the present appeal.

7. Heard the learned counsel for the appellant/insurance company and the learned counsel for the first respondent and I have perused the materials on record.

8. The learned counsel appearing for the appellant/insurance company submitted that the entire compensation amount awarded by the Tribunal is highly excessive and there is no discussion in awarding the compensation amount. He also submitted that the Tribunal has awarded excess amount towards Loss of Earnings and Permanent disability and the other heads also and hence, he prayed to set aside the Award passed by the Tribunal.



9. The learned counsel appearing for the first respondent/claimant submitted that after analysing the evidence on record and the report of the doctor, the Tribunal has rightly assessed the disability and the award passed by the Tribunal is just and reasonable and the same does not warrant any interference by this court.

10. Now the point for consideration is

1) Whether the Award passed by the Tribunal is an excessive?

11. Point

According to the first respondent/claimant, due to the accident, he has sustained injuries viz., missing upper @ central incisor, laceration in lower lip, contusion on right shoulder and abrasion over right knee and fracture of right humerus and multiple injuries all over the body. Dr. Ashok Kumar, who examined the claimant was examined before the Tribunal as PW2 and he deposed that the claimant has suffered 30% disability due to the said injuries and issued Ex.P2, wound certificate, Ex.P4, medical certificate and Ex.P5, disability certificate. Based on the said medical reports as well as the evidence of PW2, the Tribunal without discussing in proper perspective, has simply awarded compensation amount of Rs.2,65,000/- along with interest at the rate of 9% per annum to the claimant. The learned counsel for the appellant/insurance company would submit that the Tribunal without considering the case of the appellant has wrongly passed the award and there is no sufficient reasons stated in the award and to determine the head of compensation amount to the first respondent/claimant and hence, the award passed by the Tribunal has to be set aside.

12. On the other hand, the learned counsel for the first respondent/claimant would submit that due to the accident, the claimant has suffered 30% disability and to prove the same, Ex.P5 disability certificate was produced before the Tribunal. Further, the claimant sustained multiple injuries all over the body and his upper @ central incisor was missing and laceration on his lower lip, contusion on right shoulder and abrasion over right knee and also fracture of right humerus and to prove the same, Ex.P2 wound certificate was marked. After analysing the evidence and documents, the Tribunal has rightly awarded a sum of Rs.2,65,000/- as compensation.

13. On a perusal of the award passed by the Tribunal, there is no discussions in the order in awarding the compensation amount to the first respondent/claimant. There is no proper adjudication in the said award passed by the Tribunal. By taking note of the fact that the claim petition was filed in the year 2003 and now, 17 years has been lapsed, both the parties have agreed to set aside the appeal on its own merits and to fix a reasonable compensation in the instant appeal on considering the evidence of PW1 and the documents



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produced by the claimant. In the evidence of PW1, he deposed that due to the accident, he has sustained multiple injuries all over the body and his upper @ central incisor was missing and laceration on his lower lip, contusion on right shoulder and abrasion over right knee and also fracture of right humerus and also he suffered 30% disability. Therefore, he is entitled for the reasonable compensation amount from the insurance company. There is no dispute that the offending insured vehicle was involved in the said accident and due to the rash and negligent act of the driver of the vehicle, the said accident was happened. It is an admitted fact that the first respondent/claimant was suffered 30% disability due to the said accident. Now, this Court has to arrive a reasonable compensation to the first respondent/claimant by taking note of the aforesaid disability of the claimant and accordingly, it is appropriate for this Court to fix Rs.1500/- per percentage for the disability and it comes to Rs.45,000/- (1500 x 30). Insofar as "pain and suffering" is concerned, the claimant is entitled to Rs.25,000/-, for "loss of earning capacity" during the treatment period of three months, the claimant is entitled to Rs.9,000/- (3 x 3000) and also the claimant is entitled for a sum of Rs.9,000/- towards "attender charges", a sum of Rs.10,000/-, towards "loss of amenities", a sum of Rs.5,000/- towards "transport expenses" and a sum of Rs.5,000/- towards "extra nourishment". According to the appellant, the first respondent/claimant has not produced the medical bills before the Tribunal. Therefore, under the said head, no award is passed. Insofar as the interest awarded by the Tribunal at 9% is concerned, the same is confirmed. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	For the injuries sustained by the claimant	80,000	--
2	Permanent disability	50,000	45,000 (1500 x 30)
3	Pain & Suffering	40,000	25,000
4	Loss of earning capacity	40,000	9,000 (3000 x 3)
5	Attender Charges	--	9,000
6	Loss of amenities	--	10,000



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
7	Transport Expenses	5,000	5,000
8	Extra Nourishment	5,000	5,000
9	Medical Expenses	45,000	-
	Total	2,65,000	1,08,000

Accordingly, the first respondent/claimant is entitled to a compensation of Rs.1,08,000/- along with interest at the rate of 9% per annum from the date of claim petition till the date of deposit. .

14. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scale down from Rs.2,65,000/- to Rs.1,08,000/-. No costs. Connected miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the compensation of Rs.1,08,000/- with interest at the rate of 9% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six (6) weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the first respondent/claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Motor Accident Claims Tribunal, Krishnagiri.

2. The Section Officer,
V.R. Section, Madras High Court, Chennai-104.

+1 cc to Mr.S.Arun Kumar, Advocate Sr.NO.18787

+1 cc to Mr.Mukund R.Pandian, Advocate Sr.NO. 19393

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