IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3072 OF 2010
AND
MP.NO.1 OF 2010

The National Insurance Co. Ltd.,
Cuddalore. ... Appellant/ 2nd respondent

Vs.

1.C.Poovaragavamurthy, ... 1st respondent/petitioner

2.S.Vijayalakshmi. ... 2nd respondent/1st respondent

Prayer:
Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against Judgment and decree passed in M.C.O.P.No.338 of 2006 dated 30.04.2008 by the Motor Accident Claims Tribunal, viz., 1st Additional Subordinate Judge at Cuddalore District.

For Appellant : Mr.J.Chandran

For Respondents : No appearance.
Notice Served

JUDGMENT

Aggrieved over the award passed by the Tribunal, the Appellant/Insurance company has filed the present appeal challenging the quantum of compensation.

2. The claimant have filed a claim petition before the Tribunal seeking compensation of Rs.7,00,000/- for the grievous injuries and multiple fractures sustained by him in a road accident that took place on 22.10.2005.

3. The brief case of the claimant is as follows: On 22.10.2005 at about 10.45 a.m., while the petitioner was riding

in his motor cycle bearing Reg.No.TN-01-S-2369 from South to North direction at his extreme left hand side of the Cuddalore to Pondicherry main road at Thavalakuppam, the 1st respondent's vehicle viz., Omini car bearing Reg.No.PY-01-Q-0012 came in the opposite direction in a rash and negligent manner and hit against the petitioner and caused the accident, whereby the petitioner has sustained grievous injuries and multiple fractures all over the body and head. According to the claimant, the rash and negligent driving of the driver of the Omni car was the cause of the accident and since the first respondent/ owner of the vehicle insured her omni car with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the second respondent/Insurance company by filing counter affidavit by stating that the negligent is only on the part of claimant.

5. Before Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and Ex.P1 to Ex.P12 were marked. On the side of the respondents, neither any witnesses examined nor any documents marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.3,71,000/- as compensation to the claimant under various heads as extracted hereunder.

Sl No.	Heads	Amount in Rs.
1	Permanent Disability	2,92,500
2	Medical Expenses	40,000
3	Transportation Charges	3,500
4	Extra nourishment	10,000
5	Future Medical expenses	10,000
6	Attender Charges	5,000
7	Pain and Sufferings	10,000
	Total	3,71,000

The Tribunal has concluded that the negligent is only on the part of the first respondent and hence, on behalf of the first respondent, the second respondent/Insurance Company is liable to pay the above compensation to the claimant. Challenging the liability as well as the quantum of compensation awarded by the Tribunal, the second respondent/insurance company has filed the present appeal.

7. Heard the learned counsel appearing for the appellant/Insurance Company and perused the materials on record. Though, notice was served to the respondent/claimants, it was returned with an endorsement as insufficient address. Even paper publication was also effected, none appeared on behalf of the respondents.

8. The learned counsel for the appellant/Insurance Company submitted that the claimant has suffered grievous injuries and multiple fractures all over the body and head and he was claiming a compensation for a sum of Rs.7,00,000/-. While the claimant was proceeding from Cuddalore to Pondicherry at 10.45 a.m. on 22.10.2005, the second respondent's vehicle was coming on the opposite direction at a very high speed in a rash and negligent manner and dashed against the petitioner/claimant's motorcycle and caused the accident. Due to the accident, the petitioner was thrown out of his motor cycle and sustained grievous injuries. P.W.2 examined the claimant and assessed 65% disability was suffered by the claimant due to the said accident. The learned counsel for the appellant/Insurance Company submitted that the injury caused to the claimant/ respondent as shown in Column No.11 of the claim petition does not reflect fracture of hip bone. Even in the accident register and wound certificate it is mentioned as grievous injury all over the body and head. He further submitted that the Tribunal ought to have disbelieved the evidence of P.W.2, Dr.Siva Subramaniam, that he assessed 65% disability, without having any other medical records for assessing such disability. According to the appellant/Insurance company on the aforesaid ground alone the appeal has to be allowed.

9. On perusal of the evidence of P.W.2, the Doctor, who was examined on the side of the claimant, it is stated that the claimant was sufferred 65% of permanent disability, who had considered the injury but had not produced any supporting medical records to show that the petitioner has fracture in the hip. But in Column-11 of the claim petition, the claimant has stated that he has suffered grievous injuries and multiple fractures all over the body and head. So, there is no dispute with regard to the statement of the claimant that he suffered grievous injuries. Whether the 65% as assessed by Dr.Siva Subramaniam-P.W.2 is a permanent disability or partial disability is the dispute in the present appeal. The evidence of P.W.2 has not been considered by the Trial Court as he has consistently stated in his evidence that the claimant has suffered partial disability due to the said accident. In his evidence, he has stated that as per accident register and wound certificate, the claimant has sustained injury on his body and head. Therefore, from the evidence of P.W.2, this Court can understand that the claimant has suffered injury in the said

accident. As per P.W.2, he is accepting that the claimant sustained injuries to his head and also in other parts of the body. But the injury was only partial disability and the same is reflected in the medical records. Therefore, the multiplier method adopted by the Tribunal is not in consensus with the case of National Insurance Company Limited Vs. Pranay Sethi and others reported in (2017) 16 SCC 680. It is also to be noted that the respondent-claimant would have taken treatment continuously. There is no other evidence to disbelieve the 65% disability sustained by the respondent-claimant. Except the evidence of the Doctor that the claimant suffers 65% disability, there is no other evidence placed with regard to that due to 65% disability, the claimant's future earning capacity would be prevented and he will not be able to do normal work in the future.

10. After careful consideration of the facts and material evidence placed, this Court has come to a conclusion that the respondent claimant is entitled for Rs.1500/- per percentage of disability and insofar as other heads, the Tribunal has awarded only a meagre amount to the claimants. Therefore, the award passed by the Tribunal is modified and the calculation of the award amount under various heads is as follows:

Sl No	Heads	Amount in Rs.
1	Permanent Disability 1500 x 12= 18,000/- x 65% =11,700/- x 15 years	1,75,500
2	Medical Expenses	40,000
3	Transportation Charges	5,000
4	Extra nourishment	15,000
5	Future Medical expenses	15,000
6	Attender Charges	10,000
7	Pain and Sufferings	10,000
	Total	2,70,500

Accordingly, the compensation amount awarded by the Tribunal is reduced to Rs.2,70,500/-.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified and reduced from Rs.3,71,000/- to Rs.2,70,500/-. No costs. Consequently, connected civil miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the entire revised compensation amount of Rs.2,70,500/- (if not already deposited) within a period of six weeks from the date of receipt of a copy of this order. If the amount already awarded by the Tribunal is deposited by the Insurance Company, then the appellant/Insurance company is entitled to withdraw the balance amount after disbursing the compensation amount payable to the claimant on filing appropriate application before the Tribunal.

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

Sd/-
Deputy Registrar(Admin III)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional Subordinate Judge,
(The Motor Accident Claims Tribunal)
Cuddalore.

2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.J.Chandran, Advocate, S.R.No.21986

CMA.No.3072 of 2010
and
MP.No.1 of 2010

RLD(CO)
CS/19/11/2021