



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA.No.1159 of 2016

and

CMP.No.8759 of 2016

United India Insurance Company Limited

21t Patrick's Building, Museum Road,

Bangalore City, Karnataka.

... Appellant/2nd Respondent

Vs.

1.Ramesh

2.The Correspondent,

St.Mary Magadalane Matriculation School,

3rd Cross, Kamaraj Colony,

Hosur Town & Taluk.

... Respondents/Petitioner/

1st Respondent

PRAYER: This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2015, made in MCOP.No.1015 of 2014, on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) at Dharmapuri.

For Appellant : M/s.I.Malar

For Respondents : No appearance

JUDGMENT

(The case has been heard through video conference)

The Insurance Company is the appellant herein.

2.Private notice has been served on the respondents; Affidavit of service has been filed; Names of the respondents have also been printed in the cause list but none appeared for the respondents today.

3.This case was initially taken up by the learned Principal District Judge as MCOP.No.742 of 2013 and thereafter, made over to Sub-Court, Dharmapuri and re-numbered as MCOP.No.1015 of 2015.



4(a).The first respondent herein/claimant, who has sustained injuries in the road transport accident, has filed a petition in MCOP.No.1015 of 2014, before the Motor Accidents Claims Tribunal, Dharmapuri, claiming compensation, by stating that due to rash and negligent driving of the driver of the offending vehicle viz., St.Mary Magadalane Matriculation School, Hosur, accident has taken place and in support therefor, the first respondent herein/claimant was examined himself as PW1 and the Tribunal has awarded a sum of Rs.2,57,250/- as compensation.

4(b).Hence, the Insurance Company has filed this Civil Miscellaneous Appeal to challenge the finding rendered in MCOP.No.1015 of 2014, by the Motor Accident Claims Tribunal (Special Sub-Judge) at Dharmapuri, dated 29.10.2015, on the point of negligence as well as on the point of quantum.

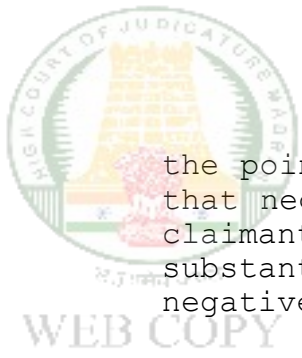
5.Though the Insurance Company has filed a counter statement stating that since the accident had not occurred due to the rash and negligent driving of the driver of the first respondent's vehicle, negligence has to be fixed at 50% on both the driver of the first respondent's vehicle and the second respondent/insurance company. In view of the contributory negligence by the claimant/injured, the accident has taken place. This Court has given its anxious consideration to the said contention raised by the learned counsel for the appellant/Insurance Company.

6.During the course of Trial, before the Tribunal, on behalf of the claimants, PW1 & PW2 were examined and marked Exs.P1 to P11 and on the side of the defendants, DW1 was examined and marked Ex.R1.

7.Heard the learned counsel for the appellant/insurance company on the point of quantum and perused the materials placed on record. There is no appearance for the respondents.

8(a).On a perusal of the documentary evidence filed before the Tribunal, it appears that neither the observation mahazar or sketch was filed before the Tribunal to give idea about lay out position of both the vehicles on the incident. For the reasons best known, the driver of the van bearing Registration No.TAO-3744, which was insured with Insurance Company, was not examined and non-examination of the driver of the first respondent's van also caused doubt about the stand taken by the appellant/Insurance Company.

8(b).Since no attempt has been made by the appellant/Insurance Company for marking Observation Mahazar or Sketch to enlighten before the Tribunal and also non-examination of the driver of the offending vehicle, this Court finds that



the point that was urged before this Court is for the first time that negligence viz., contributory negligence on the part of the claimant has been pleaded and in the absence of any substantiated plea before the Tribunal, the said plea stands negatived.

9. On a perusal of the records, it appears that the accident has taken place on 27.10.2006, at about 06.15 p.m., and PW2/Dr.L.Tiruvengadam, has assessed the disability at 45% for the injuries sustained in the accident and accordingly, the Tribunal has fixed the disability at 45% and awarded a sum of Rs.3,000/- per one percentage disability.

10. Taking into consideration the date of the accident and manner of the accident, this Court finds that a sum of Rs.2,000/- per one percentage of disability will meet ends of the justice. Accordingly, compensation awarded by the Tribunal in respect of permanent disability is modified as under:

$$35\% \times 2,000 = \text{Rs.}70,000/-$$

and in respect of all other heads, the compensation awarded by the Tribunal is hereby confirmed and the same is shown as follows:

S.No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Disability	1,35,000/- (45% x 3,000)	70,000/- (35% x 2,000)
2	Pain and Suffering	25,000/-	25,000/-
3	Medical Expenses	52,250/-	52,250/-
4	Nutrition	5,000/-	5,000/-
5	Transportation Charges	5,000/-	5,000/-
6	Mental Agony	20,000/-	20,000/-
7	Attendant Charges	5,000/-	5,000/-
8	Loss of earning for two months	10,000/-	10,000/-
	Total	2,57,250/-	1,92,250/-

Hence, compensation awarded by the Tribunal is modified from Rs.2,57,250/- to Rs.1,92,250/- (Rupees One Lakh Ninety Two Thousand Two Hundred and Fifty Only).

11. In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent indicated as above.



(b) The appellant herein/Insurance Company is directed to deposit the modified award amount to the credit of MCOP.No.1015 of 2014, on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge), Dharmapuri, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any, and directed to recover the same from the second respondent herein.

(c) The award amount will carry interest at the rate of 7.5% per annum.

(d) On such deposit, the first respondent herein/claimant is permitted to withdraw the modified compensation amount, less the amount already withdrawn, if any.

(e) The claimants shall pay necessary Court fee, if any, on the modified compensation.

(f) No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Special Sub-Judge,
Dharmapuri.

Copy to:
The Section Officer,
V.R.Section, High Court,
Madras-104.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.15644

CMA.No.1159 of 2016

PA (CO)
CB (01/10/2021)