



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.123 of 2020
and CMP No.841 of 2020

HDFC ERGO General Insurance Company Ltd.,
New No.528, Old No.559, 2nd Floor,
Anna Salai,
Teynampet,
Chennai 600 018.

... Appellant/3rd Respondent

Vs.

1. K.Jayaprakash ...1st Respondent/Petitioner

2. Arumugam ...2nd Respondent/1st Respondent

3. A.Shankar ...3rd Respondent/2nd Respondent

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, to set aside the decree and judgment dated 30.04.2019 passed in MCOP No.1096 of 2016 on the file of MACT - Special Subordinate Judge, Coimbatore.

For Appellant : Mr.N. Somasundaar

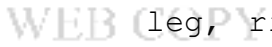
For Respondents: Mr.C.Veera Raghavan, for R1

RR 2 & 3 notice dispensed with

J U D G M E N T

The challenge in this Appeal is to the award of the Motor Accident Claims Tribunal, Coimbatore, made in MCOP No.1096 of 2016, where the claimant/first respondent was favoured with an award of Rs.10,50,307/- for the injuries suffered by him in a motor accident that occurred on 14.05.2016.

2. The claimant sought for a compensation of Rs.20,00,000/- for the injuries suffered by him. He claimed that he was aged 35



3. The injuries suffered by him are fractures in the right leg, right foot, skin avulsion, fracture in clavicle and right scapula, neck fracture with right arm contusion and multiple body injuries. It is claimed that he was treated at the Government Hospital, Mettupalayam for three days between 14.05.2016 and 17.05.2016. Thereafter he was treated at Ganga Medical Centre and Hospital, Coimbatore, between 17.05.2016 and 20.05.2016. The claimant would also contend that he was incapacitated due to the accident which led to him losing his regular income for a considerably long period.

5. The Tribunal on a consideration of the evidence on record concluded that the accident happened due to the negligence of the driver of the Maxicab bearing Reg. No.TN 03B 7644, the claim that the driver was not licensed was rejected and it was held that the Insurance Company is liable to pay the compensation. On the quantum, the Tribunal awarded the following amounts under various heads:

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



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6. I have heard Mr.N.Somasundaar, learned counsel appearing for the appellant and Mr.C.Veera Raghavan, learned counsel appearing for the first respondent. The respondents 2 and 3 remained ex-parte before the Tribunal and hence notice to them in this appeal is dispensed with.

7. Mr.N.Somasundaar, learned counsel appearing for the Insurance Company would submit that the award of compensation of Rs.3,00,000/- under the head of loss of amenities and Rs.5,00,000/- under the head of pain and sufferings is exorbitant and the same will have to be reduced. He would also point out that the Tribunal has awarded a sum of Rs.60,000/- towards loss of income and the award under that head does not disclose any basis.

8. Contending contra Mr.C.Veera Raghavan, learned counsel appearing for the claimant would submit that though the amounts awarded under the heads of loss of amenities and pain and sufferings appear to be on the higher side, the overall award is just and reasonable, considering the injuries suffered by the claimant.

9. I have considered the rival submissions.

10. Admittedly, the claimant has not been referred to Medical Board. The Tribunal has not found that the claimant has suffered any permanent disability no Doctor has been examined. Therefore, the compensation has to be worked out only for the injuries suffered by the claimant. In the absence of any disability, the Tribunal has awarded Rs.75,000/- for grievous injuries and Rs.60,000/- for loss of income, which I do not think could be said to be on the higher side, considering the nature of injuries suffered by him and the fact that the claimant was running his own business. The various fractures suffered by him would have definitely disabled him from concentrating on the business for a considerable period of time, which the Tribunal has fixed at four months. I do not see any reason to interfere with the said discretion exercised by the Tribunal.

11. The Tribunal has granted a sum of Rs.90,307/- towards Medical expenses based on Medical Bills that were produced. The amounts awarded under the heads for transportation to Hospital, Extra Nourishment, damage to clothing and articles etc. are also reasonable. Coming to the award under the two heads namely loss of amenities and pain and sufferings, the award of Rs.3,00,000/- and Rs.5,00,000 under those two heads is really on the higher



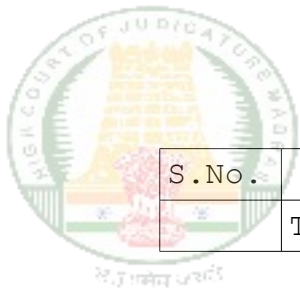
side.. The learned counsel for the Insurance Company would draw my attention to the judgment of the Hon'ble Supreme Court in Rajkumar v. Ajay Kumar, reported in 2010 (2) TNMAC 581, wherein the Hon'ble Supreme Court has held that compensation under the head of loss of amenities could be granted only on evidence and that too in cases where it is the case of a serious injury.

12. As rightly pointed out by Mr.N.Somasundaar, learned counsel appearing for the petitioner, there is no medical or corroborating evidence available to show that the claimant had suffered any kind of disfigurement or disability which would affect his marriage prospects or which would have a lasting impact throughout his life. In the absence of such evidence, as pointed out by the Hon'ble Supreme Court in Rajkumar v. Ajay Kumar, award of compensation under the head of loss of amenities itself may not be just. I also find that award of Rs.5,00,000/- towards pain and suffering for injury which required hospitalization only for about six days is exorbitant. In the light of the above discussion, the awards under these two heads will have to be necessarily reduced. In view of the categorical pronouncement of the Hon'ble Supreme Court and in the absence of any evidence regarding loss of amenities, I am of the opinion that the entire award under that head will have to be set aside.

13. As regards the award under the head of pain and suffering, though the hospitalisation was only for six days, the nature of the injuries namely several fractures suffered would have caused quite a bit of pain and suffering to the claimant. Considering his age and the fact that he was carrying on business, I am of the opinion that the award under the head of pain and suffering could be fixed at Rs.1,50,000/-.

14. In light of the above the award of the Tribunal requires modification and the same is modified as follows:

S.No.	Heads	Amount (Rs.)
1.	Compensation for grievous injuries	75,000/-
2.	Loss of Income	60,000/-
3.	Medical Bills	90,307/-
4	Pain and Sufferings	1,50,000/-
5	Transportation to Hospital	10,000/-
6	Extra Nourishment	10,000/-
7.	Damage to clothing and articles	5,000/-



S.No.	Heads	Amount (Rs.)
	TOTAL	4,00,307/-

15. In the light of the above, the appeal is partly allowed, the award of the Tribunal is modified, the claimant will be entitled to a sum of Rs.4,00,307/- rounded off to Rs.4,00,000/-. The Insurance Company is directed to deposit the award amount as per the modified award, less the amount, if any, already deposited, with appropriate interest as granted by the Tribunal to the credit of MCOP No.1096 of 2016, within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant is permitted to withdraw the same. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

jv
To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Coimbatore.

2. The Section Officer,
V.R.Section,
High Court of Madras.

+1cc to Mr.N.Somasundar, Advocate Sr.61403

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srg 19/01/2022