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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2182 of 2012 &
M.P.No.1 of 2012

National Insurance Company Limited,
Cuddalore

..

Appellant/R2

Vs

1.Senthamizh Azhagan
2.M.Karthikeyan

... 1st Respondent/Petitioner
... 2nd Respondent/R1

(R2 set exparte in lower court)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment and Decree dated 14.10.2011 made in MCOP.No.1944 of 2006 on the file of the Motor Accident Claims Tribunal, (II Additional Subordinate Judge) at Cuddalore.

For Appellant : Ms.R.Sree Vidhya

For Respondent 1 : No appearance

JUDGMENT

This civil miscellaneous appeal has been filed by the Appellant Insurance Company challenging the impugned award dated 14.10.2011 passed by the Motor Accident Claims Tribunal (II Additional Subordinate Judge) at Cuddalore in MCOP.No.1944 of 2006.

2. The Appellant/claimant has challenged the impugned award on the following grounds (a) the Appellant Insurance Company is not liable to pay compensation, since the first respondent/claimant was himself a tortfeasor as at the time of the accident, he was under the influence of Alcohol and (b) the quantum of compensation awarded by the Tribunal is excessive.



3. The first respondent/claimant sustained injuries as a result of an accident on 30.01.2003 caused by a vehicle owned by the second respondent and insured with the Appellant Insurance Company. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

Heads	Award Amount (Rs.)
Loss of income	1,89,000/-
Pain and suffering	10,000/-
Extra nourishment	5,000/-
Transportation	5,000/-
Medical Expenses	5,000/-
Total	2,14,000/-

4. Insofar as the first contention raised by the Appellant/Insurance Company namely that the first respondent/claimant was himself a tortfeasor as he was under the influence of alcohol at the time of the accident is concerned, the said contention cannot be accepted by this Court for the following reasons:

(a) No document has been produced by the Appellant/Insurance company to prove that the first respondent/claimant was under the influence of alcohol at the time of the accident.

(b) No breath analyser test was also done to prove that the first respondent/claimant was under the influence of alcohol at the time of the accident.

(c) The involvement of the insured vehicle in the accident which resulted in the first respondent/claimant sustaining injuries has also not been disputed by the Appellant Insurance Company.

5. Insofar as the second contention raised by the Appellant/Insurance company namely, the quantum of compensation awarded by the Tribunal is excessive is concerned, this Court observes the following:

(a) The first respondent/claimant sustained tibia bone fracture in his left leg and grievous injuries all over his body. The Doctor PW2 who examined him has assessed the disability of the first respondent/claimant at 45%. Admittedly,



as seen from the evidence available on record, the first respondent/claimant was never hospitalised and has only taken out-patient treatment. However, the Tribunal under the impugned award has adopted multiplier method for assessing the loss of income of the first respondent / claimant. Infact the first respondent/claimant was a police constable at the time of the accident and no evidence has been produced by him before the Tribunal to prove that due to the injuries sustained by him as a result of the accident, he had lost his earning capacity. While that be so, this Court is of the considered view that the Tribunal ought not to have adopted multiplier method for assessing the loss of income to the first respondent/claimant. The Doctor has assessed the disability of the first respondent/claimant at 45% which has been accepted by the Tribunal. But however, the Tribunal has assessed the whole body disability of the first respondent/claimant at 15% i.e., 1/3rd of the 45% disability for the purpose of assessing the loss of income by adopting the multiplier method. Since this Court is of the considered view that the multiplier method cannot be adopted for the instant case, the disability compensation can be awarded to the first respondent /claimant only on percentage basis. After giving due consideration to the year of the accident and since the first respondent/claimant has suffered 45% disability, this Court fixes the disability compensation for the first respondent/claimant at Rs.67,500/- calculated at Rs.1,500/- per percentage of disability for the 45% disability. Since this Court is awarding Rs.67,500/- towards disability compensation, the assessment of Rs.1,89,000/- towards loss of income by the Tribunal has to be set aside. Accordingly, the same is set aside by this Court.

(b) With regard to the compensation awarded by the Tribunal under various other heads namely pain and suffering at Rs.10,000/-, extra nourishment at Rs.5,000/-, transportation at Rs.5,000/- and medical expenses at Rs.5,000/- are concerned, the same cannot be considered to be excessive as alleged by the Appellant Insurance Company and therefore, the same is confirmed by this Court.

6. For the foregoing reasons, the amount awarded by the Tribunal is reduced to Rs.92,500/- from Rs.2,14,000/- in the following manner:

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of income	1,89,000/-	---
Disability	--	67 500/-



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Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Pain and suffering	10,000/-	10,000/-
Extra nourishment	5,000/-	5,000/-
Transportation	5,000/-	5,000/-
Medical Expenses	5,000/-	5,000/-
Total	2,14,000/-	92,500/-

7. In the result, this Civil Miscellaneous Appeal is allowed by reducing the award amount from Rs.2,14,000/- to Rs.92,500/-. The Appellant Insurance Company is directed to deposit the award amount i.e., Rs.92,500/- after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and costs to the credit of MCOP.No.1944 of 2006 within a period of four weeks from the date of receipt of a copy of this Judgment. If the Appellant Insurance Company has already deposited the excess amount i.e., above Rs.92,500/- as awarded by this court, it is open for them to file an appropriate application before the Tribunal to withdraw the excess amount deposited by them to the credit of MCOP.No.1944 of 2006.

8. The Tribunal shall transfer the amount lying to the credit of MCOP.No.1944 of 2006 to the bank account of the first respondent/claimant through RTGS within a period of one week thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(R)

// True Copy //

Sub Assistant Registrar

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To

1.The II Additional Subordinate Judge
at Cuddalore.



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

+1cc to Mr.R.Ravichandran, Advocate SR.No.44699

C.M.A.No.2182 of 2012

AD(CO)
CB(23/11/2021)