



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.959 of 2013 and
M.P.No.1 of 2013

The Divisional Manager,
The United India Insurance Company Ltd.,
Katpadi Road, Vellore. ... Appellant/ 2nd respondent

Vs.

1. Settu ... I respondent/Claimant

2. M/s K.H.Shoes (P) Ltd.,
Bypass Road, Ranipet. ... II respondent/I respondent

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 30.11.2006 passed in MCOP No.37 of 2006 by the Additional District Judge, Motor Accident Claims Tribunal, Fast Track Court No.2, Ranipet.

For Appellant : Mr.sathish Babu
for Mr.S.J.Jagadev

For respondents: Mr.E.Kannadasan for R1
Notice unserved to R2

J U D G M E N T

Aggrieved over the award passed by the Tribunal, the insurance company has filed the present appeal challenging the liability as well as the quantum of compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that took place on 30.04.2002

3. The brief case of the claimants is as follows: On 30.04.2002, the claimant was riding his motorcycle bearing



registration No.TN-23-0847 along with his mother and father as pillion riders along the Wallajah-Arctot Road and while they nearing Amudham Ice Canteen, a bus bearing registration No.TN-23-Y-6363 came from the opposite direction, dashed against the motorcycle, thereby he sustained grievous injuries all over his body and he was taken to Government Hospital, Vellore, where from he was taken to CMC Hospital for further treatment. According to the claimants, the rash and negligent driving of the driver of the bus was the cause of accident and since the first respondent/ owner of the vehicle insured his bus with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the Insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and Ex.P1 to Ex.P7 were marked. On the side of the respondents, one witness was examined as RW1 and Ex.R1 was marked.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.90,000/- as compensation to the claimant under various heads as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Transportation charges	5000
2	Extra nourishment	5000
3	Medical expenses	5000
4	Pain and sufferings	10000
5	Loss of income	5000
6	Loss of earning capacity	60000
	Total	90000

Challenging the quantum of compensation awarded by the Tribunal, the insurance company has filed the present appeal to scale down the compensation.

7. Heard the learned counsel for the appellant and the counsel for the claimant and I have perused the materials on record.

8. The learned counsel appearing for the appellant/



insurance company submitted that without appreciating the case of the appellant, the Tribunal has awarded a huge amount as compensation to the claimant. He further submitted that the claimant has driven the motorcycle along with two pillion riders, which is contrary to the conditions of the insurance policy and the above act is equal to the contributory negligence on the part of the rider of the motorcycle and hence, the insurance company is not liable to pay compensation. It is contended by him that the claimant has not suffered any fracture, however the Tribunal has awarded a sum of Rs.60,000/- towards "Loss of earning capacity" and hence, the compensation awarded by the Tribunal is liable to be scaled down.

9. The learned counsel appearing for the first respondent/ claimant submitted that after considering the various factors the Tribunal has awarded compensation to the claimant. He further submitted that as per the decisions of the Honourable Supreme Court, the claimant is entitled to get compensation under the heads " Loss of amenities" and " Attender's charges" and even though the claimant has not filed any appeal, the compensation awarded by the Tribunal may be enhanced.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be scaled down.

11. Point

It is not disputed by both the parties that on the date of accident, the claimant was riding the vehicle along with his mother and father as pillion riders and the bus came from the opposite side dashed against the motorcycle. During the accident, the claimant had suffered injuries and to prove the same wound certificate and medical bills were produced before the Tribunal as Ex.P2 and Ex.P5. Further, a criminal case was registered against the driver of the bus and for the same First Information Report and the investigation report had also been filed before the Tribunal as Ex.P1 and Ex.R1 respectively. It is also admitted fact that the driver of the bus has paid before the Magistrate Court for his rash and negligence Act. The contention of the learned counsel appearing for the appellant is that the claimant has driven the vehicle along with two pillion riders, which is the violation of the provisions to the Motor Vehicles Act, however, the Tribunal has not deducted any amount towards contributory negligence on the part of the claimant. There is some force on the contention of the learned counsel for the



appellant. Considering the above facts and circumstances of the case, it is appropriate for this court to fix 25% contributory negligence on the part of the claimant and 75% contributory negligence on the part of the driver of the bus.

12. As far as the quantum of compensation is concerned, the Doctor who examined as PW2 has assessed the disability suffered by the claimant at 50%. While calculating loss of earning capacity, the Tribunal has fixed the monthly income of the deceased at Rs.500/- and by considering the nature of injuries and the disability, has awarded a sum of Rs.6000/- per year and awarded a sum of Rs.60,000/- for ten years towards loss of earning capacity, which is not on the higher side. The compensation awarded under the other heads also just and reasonable. However, no amount was awarded towards "loss of amenities" and "attender's charges". Accordingly, a sum of Rs.10,000/- each is awarded for the above said heads. 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	Transportation charges	5,000	5,000
2	Extra nourishment	5,000	5,000
3	Medical expenses	5,000	5,000
4	Pain and sufferings	10,000	10,000
5	Loss of income	5,000	5,000
6	Loss of earning capacity	60,000	60,000
7	Loss of amenities	-	10,000
8	Attender's charges	-	10,000
9	Total	90,000	1,10,000
10	After deducting 25% towards contributory negligence		82,500



This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is scaled down from Rs.90,000/- to Rs.82,500/- No costs. The civil miscellaneous petition is closed.

(ii) The appellant/insurance company is directed to deposit the revised compensation of Rs.82,500/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(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/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mst

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.2, Ranipet.

+1cc to Mr.S.J.Jagadev, Advocate, S.R.No.19005

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.19207

CMA. No.959 of 2013 and

M.P.No.1 of 2013

RLD(CO)

SB(22/09/2021)