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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1406 of 2020
and CMP.No.10274 of 2020

(Through Video Conferencing)

United India Insurance Company Limited,
Divisional Office,
Code No.170600, No.1171, Muthiya Complex,
Erode - 638 001. ... Appellant/2nd Respondent

Vs.

1.P.Anumanthan .. Respondent/ Petitioner

2.T.R.Thangavel .. Respondents/1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 19.12.2019 made in M.C.O.P.No.655 of 2017, on the file of the Motor Accidents Claims Tribunal, Dharmapuri, Special District Judge, Dharmapuri.

For Appellant : Mr.C.Paranthaman

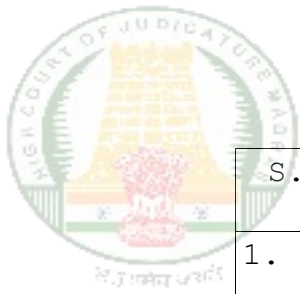
For R1 : Mr.V.Balamurugan

For R2 : No Appearance

JUDGMENT

The Insurance Company is the appellant in this appeal. It is aggrieved by the judgment and decree awarded by the Tribunal dated 19.12.2019 in MCOP.No.655 of 2017 passed by the Motor Accidents Claim Tribunal, Special District Judge, Dharmapuri.

2. By the impugned judgment and decree, the Tribunal has awarded a sum of Rs.3,92,000/- as compensation to the 1st respondent / claimant under the following heads:



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S.No.	Heads of Compensation	Amount Awarded by the Tribunal
1.	Compensation for disability	Rs.2,88,000/-
2.	Pain and Suffering	Rs.25,000/-
3.	Extra nourishment expenses	Rs.20,000/-
4.	Attender charges	Rs.5,000/-
5.	Loss of amenities	Rs.20,000/-
6.	Medical expenses	Rs.32,000/-
7.	Transport expenses	Rs.2,000/-
	Total	Rs.3,92,000/-

3. The brief facts of the case are that the 1st respondent/claimant met with an accident while he was riding the Bajaj motorcycle bearing Reg.No.TN 29 AS 1189 near Dharmapuri-Hosur road, when a Bolero car bearing registration No. TN.34.X.7822 insured with the appellant - Insurance Company driven by its driver in a rash and negligent manner, knocked the 1st respondent/claimant. As a result of the accident, 1st respondent/claimant sustained grievous injuries.

4. The appellant / Insurance company is aggrieved by the impugned judgment and decree insofar as application of multiplier to the 1st respondent. It is stated that the Tribunal ought not to have adopted multiplier method based on the disability assessed by the medical board as per Ex.X1 as 20% and that there was no functional disability and that the respondent is able to do his work. Therefore it is submitted that the Tribunal ought to have awarded compensation by adopting percentage method.

5. It is further submitted that the respondent / claimant neither possessed license nor was wearing helmet at the time of the accident. It is further submitted that the respondent / claimant was in an inebriated condition at the time of accident and therefore the compensation awarded was also liable to be reduced.

6. Appearing on behalf of the respondent, the learned counsel Mr.V.Balamurugan, submitted that the impugned order is well reasoned and requires no interference. The respondent has also filed an application to withdraw the amount deposited by the appellant, pursuant to the order.

7. Heard the learned counsel for the appellant and the learned counsel for the respondent. I have perused the impugned Judgment and decree. I have also perused the exhibits that were marked before the Tribunal



8. As per the records available, the first respondent suffered injuries in the third and fourth metatarsal head and neck in the right foot and there was laceration in the right fore head. He also underwent surgery on 28.07.2016 and implants were fixed for the treatment of fracture. That apart, the respondent / claimant was also referred to the Medical Board. The disability certificate was marked as Ex.X1 fixing 20% partial permanent disability, by concluding that there is a deformity in the right foot. The Tribunal has considered the notional income of Rs,7,500/- to arrive at a compensation of Rs.2,88,000/-.

9. Though the medical board - Ex.X1 indicated the partial permanent disability at 20%, the Tribunal has not assessed functional disability on account of the nature of injuries by the appellant by applying multiplier method, as per the decision of the Hon'ble Supreme Court in Rajkumar Vs. Ajay kumar and another [2010 (2) TNMAC 581 (SC)].

10. Considering the fact that the 1st respondent had suffered the above injuries indicates and incurred a sum of Rs.32,000/- towards medical expenses when he was hospitalised as inpatient from 28.07.2016 to 30.07.2016 in K.S.Hospital, Dharmapuri and undergone surgery, the appellant was entitled for compensation for the injury suffered. However, the appellant is entitled for compensation for injuries.

11. The appellant / Insurance company has not produced any document to substantiate that the respondent was responsible for the accident. There are no records to substantiate at what time the accident took place the first respondent was either not wearing the helmet or was inebriated and responsible for the accident. Whether the 1st respondent was in an ebirated condition at the time of accident has not been substantiated by the appellant.

12. Considering the fact that the injury would take atleast six months to heal, further amount is to be awarded towards loss of income. Thus, the amount awarded towards loss of income of appellant is Rs.54,000/- (Rs.9,000 x 6). Similarly, the sum of Rs.25,000/- awarded towards pain and suffering is low. It is therefore enhanced to Rs.1,00,000/-

13. Considering the over all facts and circumstances of the case, the compensation awarded is modified as under:

S.No.	Heads of Compensation	Amount Awarded by this Tribunal	Amount awarded by this Court	Award Confirmed or enhanced
1.	Permanent disability	Rs.2,88,000/-	* Rs.50,000/-	reduced



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S.No.	Heads of Compensation	Amount Awarded by this Tribunal	Amount awarded by this Court	Award Confirmed or enhanced
2.	Loss of Income (Rs.9,000 x 6)	-----	- Rs.54,000/-	awarded
3.	Pain and Suffering	Rs.25,000/-	Rs.1,00,000/-	enhanced
4.	Extra nourishment expenses	Rs.20,000/-	Rs.20,000/-	confirmed
5.	Attender charges	Rs.5,000/-	Rs.5,000/-	confirmed
6.	Loss of amenities	Rs.20,000/-	Rs.20,000/-	confirmed
7.	Medical expenses	Rs.32,000/-	Rs.32,000/-	confirmed
8.	Transport expenses	Rs.2,000/-	Rs.2,000/-	confirmed
	Total	Rs.3,92,000/-	Rs.2,83,000/-	Rs.3,92,000/- reduced to Rs.2,83,000/-

* Towards injury

14. The appellant-Insurance Company is therefore directed to deposit the modified amount of compensation Rs.2,83,000/- awarded by the Tribunal together with interest and cost as ordered by the Tribunal, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

15. On Such deposit, the 1st respondent/claimant is permitted to withdraw the same together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

16. Accordingly, this Civil Miscellaneous Appeal stands partly allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Commercial cases)

//True Copy//

Sub Assistant Registrar

drl



To:

1.The Motor Accidents Claims Tribunal,
Special District Judge, Dharmapuri.

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

+1 cc to Mr.V.Balamurugan, Advocate Sr.NO. 23194

+1 cc to Mr.C.Paranthaman, Advocate Sr.NO. 23413

C.M.A.No.1406 of 2020
and

CMP.No.10274 of 2020

NK(CO)

A.SK(25.11.2021)