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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.2169 of 2021
and
C.M.P.No.12026 of 2021

HDFC Ergo General Insurance Co Ltd.,
3rd Floor, Thiripura Arcade,
No.75A, Trivandrum High Road,
Palayamkottai,
Tirunelveli - 627 002,
and at 4th Floor, 70,
Raja Narayanan Towers,
Race Course Road,
Gopalapuram,
Coimbatore.

...Appellant/3rd Respondent

...Vs...

1. A. Shanmugam Sundaram
2. V.Jegatheeswaran
3. S.Maharaja

...1st Respondent/Petitioner

...2&3rd Respondents/1&2 Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 30.01.2020 made in M.C.O.P.No.1460 of 2016 on the file of the Motor accident Claims Tribunal, Special Subordinate Judge Court, Coimbatore.

For Appellant : Mr.Somasundaar. N.

For Respondents : Mr.C. Veeraraghavan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed to set aside the award dated 30.01.2020 made in M.C.O.P.No.1460 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Judge Court, Coimbatore.



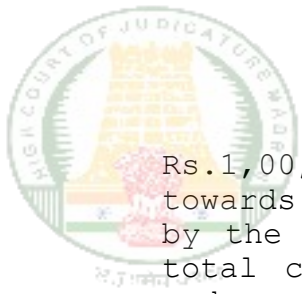
2.The Appellant herein is the Third Respondent in M.C.O.P.No.1460 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Coimbatore. The First Respondent filed the above said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in an accident that took place on 10.09.2016.

3.According to First Respondent, on 10.09.2016 about 9.45P.M., while he was riding the motorcycle bearing Registration No.TN 38 AR 2709 on the Thanner Pandhal Road, near Noyyal department store from South to North and turned towards east, at that time the motor cycle bearing Registration No.TN 69 AD 8203 driven by the second respondent, which was insured with the Appellant Insurance Company came in the opposite direction in a rash and negligent manner and dashed against the First Respondent/Claimant and thereby caused the accident. In the said accident, the First respondent sustained multiple grievous injuries. Immediately after the accident, he was taken to the Kovai Medical Centre and Hospital, Coimbatore and admitted as inpatient from 10.09.2016 to 15.09.2016. Therefore, the First Respondent filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him.

4.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the rider of the motor cycle bearing Registration No.TN 69 AD 8203 driven by the Second Respondent and directed the Appellant Insurance Company as well as the Third Respondent to pay a sum of Rs.9,60,000/- as compensation to the respondent.

5.Questioning the quantum of compensation awarded by the Tribunal in the award dated 30.01.2020 made in M.C.O.P.No.1460 of 2016, the Appellant-Insurance Company has come out with the present Appeal.

6.The learned counsel appearing for the Appellant contended that the Claims Tribunal is not correct in awarding a sum of Rs.5,000/- per percentage of disability for the accident that occurred in the year 2016. He further submitted that the Claims Tribunal, without oral and documentary evidence has awarded a sum of Rs.2,80,000/- towards Loss of Income which is on the higher side, as the income earned abroad cannot be the criteria to arrive at such compensation under Loss of Income. He further submitted that the Claims Tribunal has awarded a sum of Rs.2,00,000/- towards Pain and suffering which is excessive, as per the Judgment of the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar reported in 2010 (2) TANMAC 581. He further submitted that the Claims Tribunal has awarded a sum of



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Rs.1,00,000/- towards Loss of Amenities and a sum of Rs.10,000/- towards transportation to hospital in the absence of any claim by the claimant to that extent. He further submitted that the total compensation awarded by the Tribunal is highly excessive and prayed for setting aside the award passed by the Tribunal.

7. Heard the learned counsel appearing for the Appellant-Insurance Company and perused the entire materials on record.

8. From the materials available on record, it is seen that it is the case of the First Respondent that in the accident he sustained grievous injuries and as per Ex.C1/disability certificate issued by Chief Civil Surgeon of CMC Hospital, Coimbatore, wherein the disability suffered by the First Respondent/Claimant was fixed at 30% and considering the same, the Tribunal has fixed 30% disability, which is not excessive. Considering the age and avocation of the claimant and nature of injuries and period of treatment undergone by the claimant, the Claims Tribunal has fixed a sum of Rs.5,000/- per percentage of disability which cannot be said to be excessive.

9. At the time of accident, the First respondent was working as a Lecturer in Mechanical Engineering Debre Tabor University, Ethiopia earning a sum of Rs.1,40,000/- per month. The Tribunal on considering Ex.P19- Letter of appointment and also considering the evidence of P.W.1 has fixed a sum of Rs.1,40,000/- per month as notional income of the First Respondent and as the claimant was taking treatment as inpatient from 11.09.2016 to 2016 to 15.09.2016, 20.09.2016 to 22.09.2016 and 22.02.2017 to 23.02.2017, as per Exs.P9,P10 & P11, the Tribunal awarded a sum of Rs. 2,80,000/- for Loss of Income for two months which, in the considered opinion of this Court are on the higher side, as rightly contended by the learned counsel for the Appellant-Insurance Company on account of the reason that a Lecturer in India would normally earn a sum of Rs.70,000/- per month. Therefore, the compensation awarded towards Loss of Income for two months is reduced to Rs.1,40,000/-.

10. In so far as the compensation awarded towards Pain and Suffering, this Court by considering the Judgment of the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar reported in (2011) 1 SCC 343, is of the view that the compensation awarded towards Pain and Suffering is on the higher side and hence the same is reduced to Rs.1,50,000/-. Further, Loss of amenities awarded by the Tribunal is also found to be excessive to the extent claimed by the claimant and therefore the same is reduced to Rs.15,000/-

12. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed.



Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Compensation for grievous injuries	1,50,000/-	1,50,000/-	Confirmed
2.	Loss of income	2,80,000/-	1,40,000/-	Reduced
3.	Medical Bills	1,84,238/-	1,84,238/-	Confirmed
4.	Pain and Suffering	2,00,000/-	1,50,000/-	Reduced
5.	Loss of Amenities	1,00,000/-	15,000/-	Reduced
6.	Loss of cancellation of flight ticket	20,000/-	20,000/-	Confirmed
7.	Transportation to Hospital	10,000/-	10,000/-	Confirmed
8.	Extra Nourishment	10,000/-	10,000/-	Confirmed
9.	Damage to Clothing	5,000/-	5,000/-	Confirmed
	Total	Rs.9,59,238/- rounded off to Rs.9,60,000/-	Rs.6,84,238/- rounded off to Rs.6,85,000/-	Reduced to Rs.6,85,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,60,000/- is hereby reduced to Rs.6,85,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization. The Appellant - Insurance Company as well as Third Respondent are directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.1460 of 2016 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court, Coimbatore. On such deposit, the Tribunal is directed to transfer the Award amount directly to the Bank account of the First Respondent / Claimant through RTGS, within



a period of two weeks. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
Special Subordinate Judge Court, Coimbatore.

Copy To

The Section Officer,
V.R. Section,
High Court of Madras,
Chennai 600 104.

+1cc to M/s.C.Veeraraghavan, Advocate, S.R.No.39710
+1cc to Mr.Somasundar, Advocate, S.R.No.39703 (03/06/2022)

C.M.A.No.2169 of 2021

BP(CO)
RGA(02/06/2022)