



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.848 of 2014

and

M.P.No.1 of 2014

The New India Assurance Company Ltd.,
Rep by its Branch Manager,
1st floor, 92, East Coast Chambers,
C.N.Chetty Street, T.Nagar, Chennai.

.. Appellant/
3rd Respondent

Vs.

1.Palani

...1st Respondent/Claimant

2.A.Anandh

3.P.Krishnasamy

.. Respondents 2 & 3/
Respondents 1 & 2

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.11.2012 in M.C.O.P.No.605 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

For Appellant :Mr.K.Vinoth

For Respondents :Mr.Amar D. Pandiya for
Mr.Selvam for R1
R2- Not ready in notice
R3-Ex-parte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 24.11.2012 in M.C.O.P.No.605 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Court, Dharmapuri.

2.The appellant/Insurance Company is the 3rd respondent in M.C.O.P.No.605 of 2010 on the file of the Motor Accident Claims



Tribunal, Additional District Court, Dharmapuri. The 1st respondent filed the said claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.07.2007.

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3. According to the 1st respondent, on the date of accident i.e., on 12.07.2007, at about 15.00 hours, while he and his friend were travelling in the Tata Sumo bearing Registration No.TN 48 A 7195 belonging to the respondents 2 and 3 from Dharmapuri to Marukalampatti and they were nearing Rani Mookkanur Bus stop, the driver of the Tata Sumo drove the same in a rash and negligent manner, dashed against the road side Tamarind tree and caused the accident. In the said accident, the 1st respondent sustained grievous injuries. Therefore, the 1st respondent filed the claim petition seeking compensation against the appellant as insurer and respondents 2 and 3 as owners of the vehicle.

4. The owners of the vehicle, the respondents 2 and 3 remained ex-parte before the Tribunal.

5. The appellant filed counter statement denying the averments made by the 1st respondent. The appellant denied the manner of accident and contended that Tata Sumo belonging to the respondents 2 and 3 is not insured with appellant at the time of accident. The driver of the Tata Sumo did not possess valid driving license at the time of accident. The concerned Police failed to forward the copies of FIR, vehicle particulars and insurance particulars to the appellant. Hence, the appellant is not liable to pay any compensation to the 1st respondent. At the time of accident, the 1st respondent was not traveling in the Tata Sumo belonging to the respondents 2 and 3. Therefore, the 1st respondent is not liable to get any compensation from the appellant. FIR was lodged only after two days from the date of accident and hence, the same is not true. The appellant denied the age, avocation, income and nature of injuries sustained by the 1st respondent. In any event, the total compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1 and Dr.S.Krishnakumar was examined as P.W.2 and marked 7 documents as Exs.P1 to P7. The appellant/Insurance Company did not let in any oral and documentary evidence.

7. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Tata Sumo bearing



Registration No. TN 48 A 7195 belonging to the respondents 2 and 3 insured with the appellant, directed the appellant/Insurance Company to pay a sum of Rs.2,30,600/- as compensation to the 1st respondent and dismissed the claim petition against the 3rd respondent.

8.Challenging the quantum of compensation granted by the Tribunal, the appellant/Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that in the absence of any material evidence with regard to the income, the Tribunal has fixed a sum of Rs.3,900/- per month including future prospects as notional income of the 1st respondent and the same is excessive. The 1st respondent has not proved that he suffered loss of earning capacity and the Tribunal erroneously adopted multiplier method and awarded compensation. The amounts awarded by the Tribunal towards pain and sufferings, transportation and extra nourishment are excessive and prayed for setting aside the award passed by the Tribunal.

10.Per contra, the learned counsel appearing for the 1st respondent submitted that the 1st respondent sustained injuries all over his body and fracture on his right clavicle. To prove the injuries and disability, he examined P.W.2/Doctor and filed Exs.P3/Accident Register, P5/Wound Certificate, P6/Disability Certificate and P7/X-ray. P.W.2/Doctor examined the 1st respondent clinically and certified that the 1st respondent suffered 35% disability. At the time of accident, the 1st respondent was aged 23 years, he was working as a cleaner and was earning a sum of Rs.4,500/- per month. Due to the injuries sustained by him in the accident, he could not stand, sit, squat and not able to do any work and not able to lift any weight freely as he was doing earlier. But, the Tribunal reduced the percentage of disability assessed by P.W.2/Doctor from 35% to 25% and adopted multiplier method for awarding compensation. The Tribunal ought to have fixed disability at 35% while awarding compensation towards loss of earning capacity by adopting multiplier method. The Tribunal has fixed a meagre sum of Rs.3,900/- per month including future prospects as notional income of the 1st respondent. The Tribunal has not granted any amount towards loss of amenities, attendant charges, medical expenses and damage to clothes. The amounts awarded by the Tribunal under other heads are also not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel



and disability, he could not have worked atleast for a period of four months. Hence, a sum of Rs.26,000/- (Rs.6,500/- x 4) is granted towards loss of income. Though the 1st respondent has not filed any document with regard to medical expenses, he could have spent some amount towards medical expenses as he suffered fracture and disability. Considering the same, a sum of Rs.10,000/- is granted towards medical expenses. Due to the injuries and fracture, family members of the 1st respondent would have attended his work. The Tribunal has not granted any amount towards attendant charges. A sum of Rs.10,000/- is granted towards attendant charges. In view of the fracture and disability, the 1st respondent has to face some discomfort in his routine work. Hence, a sum of Rs.10,000/- is granted towards loss of amenities and Rs.500/- is granted towards damage to clothes. 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.	Loss of earning capacity	2,10,600/-	-	Set aside
2.	Pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Transport expenses	5,000/-	5,000/-	Confirmed
4.	Extra nourishment	5,000/-	5,000/-	Confirmed
5.	Loss of amenities	-	10,000/-	Granted
6.	Medical expenses	-	10,000/-	Granted
7.	Attendant charges	-	10,000/-	Granted
8.	Damage to clothes	-	500/-	Granted
9.	Loss of income	-	26,000/-	Granted



10.	Disability	-	1,05,000/-	Granted
	Total	2,30,600/-	1,81,500/-	Reduced by Rs.49,100 /-

13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,30,600/- is hereby reduced to Rs.1,81,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant-Insurance Company is 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.605 of 2010 on the file of the Motor Accidents Claims Tribunal, Additional District Court, Dharmapuri. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount lying in the credit of M.C.O.P.No.605 of 2010, if the entire award amount has already been deposited by them. This appeal is dismissed against the 3rd respondent. Consequently the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

vkr

To

1. The Motor Accident Claims Tribunal,
Additional District Judge,
Dharmapuri.



Copy to:
The Section Officer,
VR Section, High Court,
Madras.

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+1cc to Mr.M.Selvam, Advocate SR.No.60466

+1cc to Mr.K.Vinod, Advocate SR.No.60370

C.M.A.No.848 of 2014 and
M.P.No.1 of 2014

SV(CO)
CB(10/01/2022)