



C.M.A.No.1267 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1267 of 2021
and C.M.P.No.6487 of 2021

United India Insurance Co. Ltd.
Motor Third Party Hub
No.134, Silingi Buildings
4th floor, Greams Road, Chennai-6.

... Appellant

Vs.

1.Sabareesan

2.A.Vaithiyanathan

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.06.2019 made in M.C.O.P.No.8563 of 2015 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Mr.P.Sankaranarayanan



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For R1 : Mr.R.Nalliyappan

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 11.06.2019 made in M.C.O.P.No.8563 of 2015 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.8563 of 2015 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai. The 1st respondent filed the said claim petition claiming a sum of Rs.41,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.10.2015.

3.According to the 1st respondent, on the date of accident i.e., on 11.10.2015 at about 1.30 hours, while he was riding the motorcycle bearing Registration No.TN 31 BU 2868 along OMR R.G. Salai near Thuraipakkam



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Police signal from North to South direction, the owner-cum-driver of Share Auto bearing Registration No.TN 01 V 2626 drove the same in a rash and negligent manner, dashed against the motorcycle and caused the accident. In the accident, the 1st respondent sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent, owner-cum-driver of the Share Auto and appellant/Insurance Company, insurer of the said vehicle.

4.The 2nd respondent, owner-cum-driver of Share Auto remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the accident has occurred only due to rash and negligent riding by the 1st respondent. The 2nd respondent has to prove that there is no violation of policy at the time of accident. Two vehicles are involved in the accident. The owner and insurer of the motorcycle, in which the 1st respondent was riding at the time of accident, were not made as parties and hence, the claim petition is bad for non-joinder of necessary parties. Therefore, the appellant/Insurance Company is not liable



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to pay any compensation to the 1st respondent. In any event, the amount claimed by him is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1 and 14 documents were marked as Exs.P1 to P14. The appellant/Insurance Company did not let in any oral and documentary evidence. The disability certificate of 1st respondent issued by the Medical Board was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by 2nd respondent, owner-cum-driver of Share Auto and directed the appellant/Insurance Company, insurer of the said vehicle to pay a sum of Rs.52,18,000/- as compensation to the 1st respondent.

8.Against the said award dated 11.06.2019 made in M.C.O.P.No.8563 of 2015, the appellant/Insurance Company has come out with the present appeal.

9.Though the appellant/Insurance Company raised various grounds



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with regard to negligence, at the time of arguments, the learned counsel appearing for the appellant/Insurance Company restricted his argument only with regard to quantum of compensation awarded by the Tribunal and contended that at the time of accident, the 1st respondent was not employed and he has completed his Engineering degree. As per Ex.C1/disability certificate, the 1st respondent sustained disability at 70% and the Tribunal erred in fixing functional disability at 55%. The injuries sustained by the 1st respondent would not affect his employment, as he would have been employed in Information Technology Sector. The Tribunal erred in awarding compensation towards functional disability by adopting multiplier method and granting future prospects. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the 1st respondent contended that the 1st respondent was working as a Software Consultant at the time of accident and was earning a sum of Rs.20,000/- per month. Due to disability suffered by him, he is unable to do his work and lost his entire earning



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capacity. The Tribunal considering the nature of injuries, rightly adopted multiplier method, for granting compensation towards disability. The learned counsel further contended that the 1st respondent is still taking treatment and the compensation awarded by the Tribunal towards future medical expenses is meagre. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

11.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

12.From the materials on record, it is seen that the claim of the 1st respondent is that he was working as Software Consultant at the time of accident and was earning a sum of Rs.20,000/- per month. In the accident, he sustained fracture on right leg, right hand, contusion over hip and multiple injuries all over the body. The Medical Board assessed the disability at 70% and issued Ex.C1/disability certificate. The Tribunal after observing the present condition of the 1st respondent on his appearance before the Court,



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fixed the functional disability as 55% and awarded compensation for 55% disability. There is no material to show that 1st respondent suffered functional disability and lost his job. The Tribunal without considering the nature of injuries and disability suffered by the 1st respondent and without giving any reason, adopted multiplier method and the same is not correct. In the absence of any documents with regard to loss of income, the 1st respondent is not entitled to compensation for disability by adopting multiplier method. In view of the same, multiplier method adopted by the Tribunal is liable to be set aside and is hereby set aside. The 1st respondent is entitled to compensation only by adopting percentage method. The Medical Board examined the 1st respondent and assessed the disability at 70%. The appellant did not let in any contra evidence to disprove the disability assessed by the Medical Board. Therefore, the 1st respondent is entitled to compensation for 70% disability at the rate of Rs.5,000/- per percentage of disability. Thus, the compensation awarded by the Tribunal towards functional disability is modified as disability and reduced to Rs.3,50,000/- (Rs.5,000/- X 70%).

12(i). The 1st respondent has taken treatment as in-patient in MIOT



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Hospital, Chennai, in three different spells from 11.10.2015 to 06.11.2015, 24.02.2016 to 19.03.2016, 23.03.2016 to 25.03.2016 and underwent surgeries. Again, the 1st respondent admitted in the hospital on 26.12.2015, underwent surgery and discharged on the same day. The 1st respondent took treatment for more than 54 days and to prove the same, he marked the discharge summaries as Ex.P2 to P5. Considering the nature of injuries, period of treatment taken and disability suffered by the 1st respondent, the compensation granted by the Tribunal towards transportation, damage to clothes, attendant charges and loss of amenities are hereby enhanced from Rs.50,000/- to Rs.1,00,000/-, Rs.1,000/- from Rs.2,000/-, Rs.11,200/- to Rs.1,00,000/- and Rs.50,000/- to Rs.1,00,000/- respectively, as the amounts awarded by the Tribunal are meagre. The 1st respondent has also produced medical bills to prove that he is still taking treatment and he requires future medical expenses. Considering the same, we are inclined to enhance the compensation granted by the Tribunal towards future medical expenses from 50,000/- to Rs.4,00,000/- as the amount granted by the Tribunal is meagre. At the time of accident, the 1st respondent was aged 21 years. Considering the age of the 1st respondent and nature of injuries, his marital prospects will be



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reduced and hence, a sum of Rs.3,00,000/- is granted towards loss of marital prospects. The amounts awarded by the Tribunal under all 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 or reduced
1.	Functional disability	35,64,000	3,50,000	Reduced
2.	Pain and suffering	3,00,000	3,00,000	Confirmed
3.	Extra nourishment	1,00,000	1,00,000	Confirmed
4.	Transportation	50,000	1,00,000	Enhanced
5.	Damage to clothes	1,000	2,000	Enhanced
6.	Attendant charges	11,200	1,00,000	Enhanced
7.	Medical Expenses	10,91,729	10,91,729	Confirmed
8.	Future Medical Expenses	50,000	4,00,000	Enhanced
9.	Loss of amenities	50,000	1,00,000	Enhanced
10.	Marital prospects	-	3,00,000	Granted
	Total	52,17,929	28,43,729	Reduced by Rs.23,74,200/-

13. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.52,17,929/- awarded by the Tribunal



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is hereby reduced to Rs.28,43,729/- together with interest at the rate of 7.5%

per annum (excluding the default period, if any) 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. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.8563 of 2015 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed.

No costs.

(V.M.V., J) (S.M., J)

07.11.2022

Index : Yes / No

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To

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1.III Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI,J.
and
SUNDER MOHAN,J.



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