



WEB COPY

C.M.A.No.2996 of 2
and C.M.P.No.17060 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.11.2022

CORAM:

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

C.M.A.No.2996 of 2021
and C.M.P.No.17060 of 2021

M/s.Reliance Gen.Ins.Co.Ltd
2nd Floor, 15A, PLA Kanagu Towers,
11th Cross Main Road, Thillai Nagar,
Trichy - 18.

...Petitioner

Vs.

1.Vargees Raja

2.Sakthi Pandi

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 11.01.2021 passed in M.C.O.P.No.1092 of 2015 on the file of Presiding officer, Special Motor Accidents Claims Tribunal, at Tiruppur.

For Appellant : Mrs.C.Bhuvanasundari

For R1 : Mr.M.A.P.Thangavel

For R2 : Left



WEB COPY

C.M.A.No.2996 of 2
and C.M.P.No.17060 of 2



JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN.J.)

The above appeal has been filed by the Appellant/Insurance Company challenging the finding on negligence and the quantum of compensation awarded by the Tribunal in M.C.O.P.No.1092 of 2015 on the file of Special Motor Accident Claims Tribunal, Tiruppur.

2.The first respondent herein filed a claim petition stating that on 20.06.2013 at about 5.30 p.m when he was standing on the Sedapalayam Thanneerpanthal road on the left extreme, a TATA ACE bearing Registration No.TN 57 T 2126 driven by the second respondent came in a rash and negligent manner and hit the first respondent. The first respondent who was aged 17 years sustained grievous injuries. He claimed a compensation of Rs.50,00,000/- against the second respondent herein and the appellant/Insurer.

3.The appellant filed a counter statement stating that the first respondent had not established that the second respondent herein drove the TATA ACE vehicle in a rash and negligent manner. The first respondent in any event had claimed an exorbitant amount of Rs.50,00,000/- and had not substantiated the said claim and prayed for dismissal of the claim petition.

4.The second respondent herein remained ex-parte before the Tribunal.



WEB COPY

5.Before the Tribunal, the 1st respondent examined himself as P.W.1 and a Doctor as P.W.2 and marked Ex.P.1 to Ex.P.16. The appellant did not examine any witness or mark any document on their side. The disability certificate issued by the Medical Board was marked as Ex.C1.

6.The Tribunal on the basis of pleadings, documents and evidence on record found that the second respondent is liable for negligence and held that the appellant is liable to pay compensation. The Tribunal awarded a sum of Rs.29,49,291/- as compensation payable to the first respondent by the appellant.

7.Against the said award dated 11.01.2021 made in M.C.O.P.No.1092 of 2015, the appellant has filed the present appeal.

8.The learned counsel for the appellant submitted that the Tribunal had erroneously concluded that the driver of TATA ACE vehicle was liable for negligence. The Tribunal had merely relied upon the evidence of P.W.1 to conclude that the driver of TATA ACE vehicle was liable for rash and negligent driving. In any event the compensation awarded is excessive. The Tribunal had



WEB COPY

not converted the disability into whole body disability. The Tribunal did not differentiate between the disability and functional disability and erroneously adopted the multiplier method. The Tribunal ought to have adopted the percentage method in the instant case, in the absence of any evidence to show that the first respondent had suffered functional disability. The first respondent was aged 17 years and was a student. He had not produced any evidence to show that he had discontinued his studies. Hence, the multiplier method awarded by the Tribunal is not correct. The amount awarded by the Tribunal towards loss of mental prospectus is erroneous and prayed for setting aside the award of the Tribunal.

9.The learned counsel for the first respondent contended that the accident occurred only due to the negligence of the driver of the TATA ACE. The first respondent proved the same by examining himself and marked FIR which was registered against the driver of TATA ACE. The Tribunal considering the evidence of first respondent and FIR fixed negligence on the driver of TATA ACE. The Tribunal considering the nature of injury and disability awarded just compensation. The Tribunal took into consideration, Ex.P.6 to show that the first respondent had discontinued his studies and rightly awarded compensation



by adopting the multiplier method. The compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

10.Heard the learned counsels on either side and perused the pleadings, documents and evidence on record.

11.From the materials on record, we find that the first respondent had examined himself as P.W.1 in order to show that the accident had taken place due to the rash act of the second respondent herein. The first respondent had also marked Ex.P.1, the FIR which would suggest that on 20.06.2013 at about 5.30 p.m, when the first respondent was standing on the extreme left on the road near his friends bike, the second respondent who came in a TATA ACE Vehicle in rash and negligent manner had caused the accident. The evidence of P.W.1 discloses that the accident had occurred due to the rash and negligent act of the second respondent herein. The appellant has not been able to show as to why the evidence of P.W.1 should not be accepted. There is nothing in the cross examination to suggest that the evidence of P.W.1 is improbable. Further the first information report which is the earliest document narrating the events also would confirm the version of P.W.1. The appellant has not let in any evidence to disprove the version of the first respondent which is reflected in the first



WEB COPY

information report. Therefore, we are of the view that the first respondent has established that the accident took place on account of the rash and negligent act of the driver of TATA ACE Vehicle namely the second respondent herein. The Tribunal therefore rightly fixed negligence on the part of the second respondent herein. We see no reason to interfere with the finding of the Tribunal as regards negligence for the reason stated above.

12.As regards quantum, the Tribunal adopted multiplier method and fixed the compensation under the head loss of income at Rs.19,05,120/-. The Tribunal fixed monthly income at Rs.9000/-. The learned counsel for the appellant would submit that it is on the higher side. The learned counsel for the first respondent however relied upon the Judgment of the Hon'ble Supreme Court in *V.Mekala vs. M.Malathi and other* reported in **2014 (2) TNMAC 6 (SC) and (2014) 11 SCC 178** to show that where the injured is a brilliant student, notional income can be fixed at an enhanced value. The first respondent has not proved that he secured first rank or was a brilliant student. Since the accident took place in the year 2013, we are of the considered view that the notional income can be fixed at Rs.9000/- per month and there is nothing wrong in the said amount fixed by the Tribunal.



13. The Tribunal had taken into account the certificate issued by the Medical Board Ex.C1 to conclude that the first respondent suffered 70% permanent disability, considering the nature of injuries and that the Medical Board had stated that it was only 70% partial permanent disability. P.W.2, Doctor who examined the first respondent had stated that he suffered from lack of concentration, head ache and occasional black outs. He is an ortho doctor. The first respondent suffered a head injury. However, the first respondent had not examined any specialist in the field. Hence, considering the nature of the injuries and the evidence adduced by the first respondent the whole body disability can be fixed at 50%. Following the Judgments of the Hon'ble Apex Court reported in **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]** and **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another)**, the Tribunal has rightly granted 40% enhancement towards future prospects and applied multiplier 18. Thus by fixing functional disability as 50%, the compensation under the loss of income is modified as $[Rs.12600 (9000 + (40\% \text{ of } 9000)) \times 12 \times 18 \times 50\%] = Rs.13,60,800/-$. Taking into consideration, the nature of injuries, period of treatment, the compensation granted under the head “Attender charges” is enhanced from Rs.50,000/- to Rs.1,00,000/- and Extra Nourishment is enhanced from Rs.50,000/- to Rs.1,00,000/- as the amounts



awarded by the Tribunal are meagre. The compensation awarded by the Tribunal under all other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No.	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by the Tribunal (Rs.)	Award confirmed or enhanced or reduced or granted
1	Loss of income	19,05,120/-	13,60,800/-	Reduced
2	Medical Bills	7,19,171/-	7,19,171/-	Confirmed
3	Pain and Suffering	1,00,000/-	1,00,000/-	Confirmed
4	Loss of Matrimonial	1,00,000/-	1,00,000/-	Confirmed
5	Attender Chargers	50,000/-	1,00,000/-	Enhanced
6	Extra Nourishment	50,000/-	1,00,000/-	Enhanced
7	Transportation to Hospital	25,000/-	25,000/-	Confirmed
9	Total	29,49,291/-	25,04,971/-	Reduced by Rs.4,44,320/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.29,49,291/- awarded by the Tribunal is hereby reduced to Rs.25,04,971/- 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. 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.1092 of 2015 on the file of Presiding officer, Special Motor Accidents Claims Tribunal, at Tiruppur 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)

23.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order

dk

To

1. Presiding officer, Special Motor Accidents Claims Tribunal,
Tiruppur.

2. The Section Officer

VR Section

High Court of Madras



WEB COPY

Chennai – 600 104

C.M.A.No.2996 of 2
and C.M.P.No.17060 of 2



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

C.M.A.No.2996 of 2021
and C.M.P.No.17060 of 2021

23.11.2022