



C.M.A.No.468 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

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

C.M.A.No.468 of 2022
and C.M.P.No.16264 of 2022

The Manager,

M/s.United India Insurance Co. Ltd.,

No.457, V.E.Street, Thoothukudi,

Thoothukudi TK, Namakkal

... Appellant

Vs.

1.Ramani

2.Santhi

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2021 made in M.C.O.P.No.544 of 2014 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellants	: Mr.S.Arun Kumar
For R1	: Mr.C.Thangaraja
For R2	: No appearance



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JUDGMENT

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

The Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the Judgment and decree dated 30.03.2021 made in M.C.O.P.No.544 of 2014 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal.

2.The appellant/Insurance Company is the second respondent in M.C.O.P.No.544 of 2022 on the file of Motor Accident Claims Tribunal, Additional District Court, Namakkal. The first respondent filed the claim petition claiming a sum of Rs.2,00,00,000/- as compensation together with interest at 12% per annum for the injuries sustained by him in the accident that took place on 30.12.2013. According to the first respondent on 30.12.2013, 7.30 p.m., when he was travelling in his bike bearing Registration No.TN47 P 0874 and he was waiting on the left-hand side road to cross the Namakkal to Karur main road, National High Ways road from Paramathy Velur to reach his house on the other side of the road, the driver of the car bearing Registration No.TN-34-R-0990 drove the car in a rash and negligent manner and



dashed against him. In the accident, the first respondent sustained grievous injuries all over the body. Hence, he filed the claim petition claiming compensation against the appellant/Insurance company and the second respondent herein the insurer and owner of the offending vehicle respectively.

3.The owner of the vehicle/second respondent filed counter stating that the accident did not take place in the manner alleged by the first respondent and the first respondent ought not to have crossed the road on a National High Ways and there was no crossing permitted in the said place of accident. In any event, the appellant alone is liable to compensate as per the insurance policy.

4.The appellant/Insurance Company filed counter denying the averments made in the claim petition and stated that the first respondent herein who was the rider of the two wheeler is the tort-feasor under the law and he is not entitled to claim any compensation. The first respondent had tried to cross the National High Ways Bypass road in flagrant violation of the rules and regulations of the Traffic. The second respondent herein did not drive the vehicle in a rash and negligent manner and could not have expected the vehicle to cross the National High Ways at that place. Further,



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the appellant had stated that the claim petition is bad for non-joinder of parties as the insurer of the motorcycle involved in the accident was not arrayed as a party.

5.Before the Tribunal the first respondent examined three witnesses. He examined himself as P.W.1 and one Dr.Sivalingam as P.W.2, and one Kanagavel as P.W.3 and marked 28 documents Exs.P.1 to P.28. The second respondent, examined Sub Inspector of Police, Velur Police Station as R.W.1 and marked Rough Sketch, Ex.R.1. Two exhibits viz., Ex.X1, Authorization letter, and Ex.X2, Salary Certificate, were marked through P.W.3.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving of the driver of the car bearing Registration No. TN-34-R-0990 belonging to the second respondent and directed the appellant/Insurance Company being the insurer of the offending vehicle to pay a compensation of Rs.75,16,900/- to the first respondent.

7.Against the said award dated 30.03.2021 made in M.C.O.P.No.544 of 2014, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.



8.The learned counsel appearing for the appellant submitted that the Tribunal had committed an error in awarding the huge compensation of Rs.75,16,900/- without proper evidence. The learned counsel submitted that the driver of the car was not responsible for the accident and it was due the unmindful riding of the first respondent that the accident took place. The Tribunal ought to have fixed contributory negligence on the part of the driver of the car. The learned counsel submitted that the first respondent had not established that he had lost his job and hence, the Tribunal ought not to have awarded Rs.69,71,900/- towards loss of earning power. P.W.2, the Doctor had assessed physical disablement and had not assessed the alleged permanent disability in respect of the whole body. The Tribunal had failed to distinguish between the physical disablement and loss of earning power as laid down by the Hon'ble Apex Courts and this Court in several cases. The learned counsel further submitted that in the absence of proof that the first respondent lost his earning capacity, the Tribunal ought not to have adopted the multiplier method to calculate the compensation. The learned counsel also filed C.M.P.No.16264 of 2022, to receive the interim investigation report of one Mr.Ramesh, as additional documentary evidence along with enclosures. The learned counsel further submitted that the first respondent misrepresented before the Tribunal and gave false evidence to the effect that he had



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lost his job. The appellant came to know only now that he is in employment continuously and he is now working as a Principal in KVBOA Matriculation Higher Secondary School and prayed for setting aside the award of the Tribunal.

9.The learned counsel appearing for the first respondent submitted that it is an admitted fact that the first respondent is working as a Principal in KVBOA Matriculation Higher Secondary School. However, he is earning a lesser salary than, what he was earning at the time of the accident and hence, the compensation awarded by the Tribunal is not excessive, and prayed for dismissal of the appeal. However, he had no serious objections to the petition filed by the appellant for receiving additional documents. The learned counsel further submitted that the first respondent also filed a typed set of papers containing a few documents which were not marked before the Tribunal. The learned counsel for the first respondent however did not file any petition to receive them as additional evidence.

10.Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the first respondent and perused the entire materials available on record.



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11.The appellant has filed C.M.P.No.16264 of 2022 to receive investigation interim report dt.22.08.2022 of Mr.Ramesh along with enclosures as additional documentary evidence. The Respondent has no objection to allow the said application. In view of the same, C.M.P.No.16264 of 2022 is allowed and the report with enclosures is taken as additional evidence.

12.From the materials on record, and the submissions of the learned counsels, it is seen that there is no serious challenge with regard to the finding that the first respondent was guilty of rash and negligent driving. The issue is only with regard to the quantum awarded by the Tribunal. As regards the quantum it is the case of the first respondent that he was working as a Principal of a reputed school and was earning a sum of Rs.75,000/- per month. Because of the accident, he sustained grievous injuries and suffered from frequent giddiness and semi unconsciousness, and therefore, unable to attend his normal work. That apart, due to the fracture in the left leg and foot, the first respondent was not able to walk and could not stand on his own and therefore, he lost his job. The Doctor, P.W.2, deposed that the first respondent suffered fracture in meta carpal bone, right proximal tibia, maxilla bone etc, and was



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13. The learned counsel for the first respondent admits that he is currently in employment. However, we find that the first respondent has not come up with the facts and has specifically denied employment at the time of cross examination. The first respondent did not produce any document to show that due to his disability he was removed from the seven schools where he was employed. The learned counsel



for the first respondent submits that though there was no total loss of income, the first respondent has lost substantially because of reduction in income. We are unable to countenance the submission as this is contrary to the first respondent's stand before the Tribunal. That apart, there is nothing to show that because of his physical incapacity the salary got reduced as rightly contended by the learned counsel for the appellant. Therefore, we are of the view that the approach of the Tribunal in awarding compensation by adopting multiplier method is erroneous. The compensation can be only awarded on the basis of the percentage of disability suffered by the first respondent. Therefore, the compensation awarded by the Tribunal under the head, loss of income is liable to be set aside and it is accordingly set aside. The first respondent is entitled to compensation towards disability only by adopting percentage method.

14. From the materials on record, it is seen that PW2 – Dr.Sivalingam, Orthopaedic surgeon of C.M.Hospital, Namakkal has examined the first respondent and certified that the first respondent suffered 62% disability and issued Ex.P24-disability certificate to that effect. The appellant has not let in any contra evidence to disprove the evidence of PW2 – Doctor or Ex.P24 – disability certificate. In view of the same, the first respondent is entitled to compensation



for 62% disability. The accident is of the year 2013. Hence, a sum of Rs.3,000/- is granted per percentage of disability. Thus, a sum of Rs.1,86,000/- (Rs.3,000/- X 62% disability) is awarded as compensation towards disability. The Tribunal has awarded a sum of Rs.10,000/- towards attendant charges. A perusal of Ex.P.12 discloses that the first respondent has taken treatment in the hospital as in-patient from 19.01.2014 to 29.01.2014. Therefore, the amount awarded by the Tribunal towards attendant charges can be fixed at Rs.2000/- per day for 10 days (i.e.) $2000 \times 10 = 20,000/-$. The amount awarded towards Extra Nourishment and transport to hospital are enhanced to Rs.35,000/- and Rs.30,000/- respectively as the amounts awarded by the Tribunal are meagre. The Tribunal has not awarded any amount towards loss of amenities. Due to the injuries sustained in the accident, the first respondent would have suffered some discomfort. Hence, a sum of Rs. 50,000/- is awarded towards loss of amenities. 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.	Loss of income due to permanent disability	69,71,900	-	Set aside



2.	Medical Expenses	4,00,000	4,00,000	Confirmed
3.	Pain and suffering	1,00,000	1,00,000	Confirmed
4.	Transport to hospital	15,000	30,000	Enhanced
5.	Extra Nourishment	20,000	35,000	Enhanced
6.	Attendant Charges	10,000	20,000	Enhanced
7.	Disability	-	1,86,000	Granted
8.	Loss of amenities	-	50000	Granted
	Total	75,16,900/-	8,21,000/-	Reduced by Rs.66,95,900 /-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.75,16,900/- is hereby reduced to Rs.8,21,000/- 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 first respondent is permitted to withdraw the award amount now determined by this Court, along with proportionate interest and



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costs, less the amount if any, already withdrawn. Consequently, connected miscellaneous petition is closed. No costs.

(V.M.V., J) (S.M., J)
26.10.2022

Index : Yes / No
vsn

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

vsn

To

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

2.The Section Officer,
VR Section,

12/13



High Court, Madras.

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