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C.M.A.No.112 of

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.112 of 2022

and

C.M.P.No.750 of 2022

M/s. The New India Assurance Co. Ltd.,
Branch Office,
No.21/2, MSC Complex, 1st Floor,
South Indian Bank Upstairs,
Dharmapuri Main Road,
Omalur, Salem – 636 455.

Divisional Office,
Sethukrishna Trade Centre,
No.133/31-A, Trichy Main Road,
Kugai, Salem – 636 006.

.. Appellant

Vs.

1.Achuthan (Not fully oriented),
Rep. by his next friend / guardian,
Wife Sabena.

2.D.Thangaraj

3.S.Raja

4.M/s. National Insurance Co. Ltd.,
Divisional Office,



C.M.A.No.112 of

Division N.10, Flat No.101-106,
N-1, BMC House, Connaught Palace,
New Delhi – 110 001.

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Divisional Office No.1, LRN Building,
Saradha College Main Road,
Salem – 636 007.

.. Respondents

(Respondents 2 & 3 remained exparte before
the Tribunal. Hence, notice to respondents 2
& 3 dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 08.03.2019, made in M.C.O.P.No.2403 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.

For Appellant	: Mr.J.Chandran
For R1	: Mr.R.Navaneetha Krishnan
For R4	: Mr.D.Bhaskaran

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 / New India Assurance Company against the judgment and decree dated 08.03.2019, made in M.C.O.P.No.2403 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem.



2.The appellant is the 2nd respondent in M.C.O.P.No.2403 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem. The 1st respondent / claimant filed the said claim petition, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 12.07.2015.

3.According to 1st respondent, on 12.07.2015 at about 23.00 hours, he was travelling in the Maruti Omni Car bearing Registration No.KA 04 MP 9013, driven by one Karthik on the left side of the Salem – Dharmapuri Main Road. While nearing Rajalakshmi Petrol Bunk at Thoppur Pudhur, the driver of the TATA 1109 Lorry bearing Registration No.TN 30 AV 1270 belonging to 2nd respondent, who was proceeding ahead of the Maruti Omni Car, drove the same in a rash and negligent manner at a high speed, applied break and stopped the lorry without any signal. Due to the same, the driver of the car lost control and dashed against the TATA 1109 Lorry. In the said accident, the 1st respondent sustained injuries on head, face, eyes, leg, hip, hand, chest and multiple injuries all over the body. Immediately after the accident, the 1st respondent was taken to Manipal Hospital, Salem for medical treatment. Hence, the 1st respondent filed the claim petition claiming compensation against the respondents 2 to 4 and appellant, who are the



owner of the lorry, owner and insurer of the car and insurer of the lorry respectively.

4.The respondents 2 & 3, owner of the lorry and car respectively remained exparte before the Tribunal.

5.The appellant-New India Assurance Company, insurer of the TATA 1109 Lorry bearing Registration No.TN 30 AV 1270 belonging to 2nd respondent filed counter statement and denied all the averments made by the 1st respondent. According to appellant, on the date of accident, the driver of the TATA 1109 Lorry drove the same slowly and diligently on the Salem – Dharmapuri Main Road. While nearing Rajalakshmi Petrol Bunk at Thoppur Pudhur, the driver of the Maruti Car bearing Registration No.KA 04 MP 9013, which was coming behind the lorry, drove the same in a rash and negligent manner, tried to overtake the lorry, lost his control and dashed on the backside of the TATA 1109 Lorry belonging to 2nd respondent and invited the accident. The accident has occurred only due to rash and negligent driving by the driver of the car belonging to 3rd respondent. Further, at the time of accident, the driver of the TATA 1109 Lorry belonging to 2nd respondent was not possessing valid driving license to drive the lorry in violation of policy and



permit conditions. Hence, the appellant is not liable to pay any compensation to the 1st respondent. The appellant denied the age, avocation, income, nature of injuries, period of treatment, medical expenses incurred by him, disability and loss of income of the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

6.The 4th respondent – National Insurance Company Limited, insurer of the Maruti Omni Car bearing Registration No.KA 04 MP 9013 belonging to 3rd respondent filed separate counter and submitted that the accident occurred only when the driver of the TATA 1109 Lorry, who was proceeding ahead of the car, applied sudden brake and stopped the lorry without any signal. Further, at the time of accident, the driver of the car was not possessing valid driving license to drive the car in violation of policy and permit conditions. Hence, the 4th respondent is not liable to pay any compensation to the 1st respondent. In any event, the quantum of compensation claimed by the 1st respondent is highly excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1,



claimants in M.C.O.P.Nos.2019, 2027 & 2025 of 2015 were examined as P.W.2 to P.W.4 and 29 documents were marked as Exs.P1 to P29. The appellant examined one M.Ravi, Junior Assistant from Regional Transport Office, Dharmapuri as R.W.1 and marked two documents as Exs.R1 & R2. Two witness documents were marked as Exs.W1 & W2. The disability certificate of the 1st respondent was marked as Ex.C1 and the disability certificate of the claimant in M.C.O.P.No.2019 of 2015 was marked as Ex.C2.

8.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 1109 Lorry belonging to 2nd respondent and directed the appellant, being the insurer of the TATA 1109 Lorry to pay a sum of Rs.36,18,732/- as compensation to the 1st respondent at the first instance and recover the same from the 2nd respondent – owner of the TATA 1109 Lorry and dismissed the claim petition as against the respondents 3 & 4.

9.To set aside the said award dated 08.03.2019, made in M.C.O.P.No.2403 of 2015, the appellant has come out with the present appeal.



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10.The learned counsel appearing for the appellant contended that in the claim petition as well as in the FIR, it has been stated that the car belonging to 3rd respondent in which the 1st respondent was travelling, lost control and dashed on the lorry, which was proceeding ahead of the car and caused the accident. The Tribunal ought to have considered the same and fixed the negligence on the driver of the car, who dashed the car on the lorry and caused the accident. The Tribunal without properly considering the evidence on record, fixed the negligence on the driver of the lorry based on Ex.P1 / FIR. The Tribunal ought to have exonerated the appellant from its liability, as the driver of the lorry was driving the same without valid driving license on the date of accident. The Tribunal erroneously fixed the disability of the 1st respondent as 100% functional disability and awarded excessive compensation towards loss of earning capacity by adopting multiplier method. In the absence of any documentary evidence to prove the income of the 1st respondent, a sum of Rs.7,500/- per month fixed by the Tribunal as notional income of the 1st respondent is excessive. The compensation awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

11.The learned counsel appearing for the 1st respondent contended that the



Tribunal considering Ex.P1 / FIR and evidence of 1st respondent as P.W.1, rightly held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to 2nd respondent. The Medical Board examined the 1st respondent and certified that the 1st respondent suffered 100% permanent disability and issued Ex.C1 / disability certificate to that effect. The Tribunal considering Ex.C1 and nature of work done by the 1st respondent, awarded compensation for 100% loss of earning capacity by adopting multiplier method. At the time of accident, the 1st respondent was aged 25 years, working as a Mason and was earning a sum of Rs.20,000/- per month. But, the Tribunal has fixed meagre sum of Rs.7,500/- as notional monthly income of the 1st respondent and granted lesser compensation towards loss of earning capacity. The 1st respondent has taken treatment in the Manipal Hospital, Salem as inpatient from 13.07.2015 to 08.08.2015 for 27 days. The total compensation awarded by the Tribunal is not excessive and prayed for dismissal of the appeal.

12.The learned counsel appearing for the 4th respondent-National Insurance Company Limited contended that the Tribunal considering the entire materials on record, has fixed the negligence on the driver of the lorry belonging to 2nd respondent and liability on the appellant and dismissed the claim petition as against



the 4th respondent and prayed for dismissal of the appeal as against the 4th respondent.

13.Heard the learned counsel appearing for the appellant, learned counsel appearing for the 1st respondent as well as the learned counsel appearing for the 4th respondent and perused the entire materials on record.

14.From the materials available on record, it is seen that it is the case of the 1st respondent that on the date of accident while he was travelling in the Maruti Omni Car belonging to 3rd respondent on the left side of the Salem – Dharmapuri Main Road near Rajalakshmi Petrol Bunk at Thoppur Pudhur, the driver of the TATA 1109 Lorry, who was driving the same at a high speed in front of the Maruti Omni Car, applied break and stopped the lorry without any signal. Due to the same, the driver of the car lost control, dashed against the lorry and thus, the accident occurred. To prove the said contention, the 1st respondent examined himself as P.W.1 and claimants in M.C.O.P.Nos.2019, 2027 & 2025 of 2015 were examined as P.W.2 to P.W.4 respectively and marked FIR as Ex.P1, which was registered against the driver of the TATA 1109 Lorry belonging to 2nd respondent.



14(i).On the other hand, it is the case of the appellant-New India Assurance Company Limited that the driver of the Maruti Car only drove the same in a rash and negligent manner and while trying to overtake the TATA 1109 Lorry, which was proceeding ahead of him, lost his control and dashed on the backside of the TATA 1109 Lorry belonging to 2nd respondent and invited the accident. To prove their contention, the appellant did not examine the driver of the TATA 1109 Lorry, who is the best witness to depose about the manner of accident or any eyewitness to prove their case. Further, the appellant or the driver of the TATA 1109 Lorry did not file any objection to the FIR and also has not lodged any complaint against the driver of the car belonging to 3rd respondent that the driver of the car was responsible for the accident. The charge sheet was also filed against the driver of the lorry belonging to 2nd respondent.

14(ii).The Tribunal considering the evidence of P.W.1 to P.W.3, contents of Ex.P1 / FIR, Ex.R2 / final report and in the absence of any contra evidence to the evidence of P.W.1 to P.W.3, non-examination of the driver of the lorry or any eyewitness, not filing any objection to FIR and not lodging any complaint against the driver of the car, held that the accident has occurred due to rash and negligent driving by the driver of the TATA 1109 Lorry belonging to 2nd respondent. There is



no error in the said finding of the Tribunal warranting interference by this Court.

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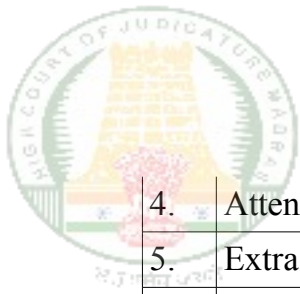
15.As far as quantum of compensation is concerned, it is the case of the 1st respondent that in the accident he sustained severe head injury, frontal bone compound comminuted depressed fracture, right fronto temporal EDH, SCF Rhinorrhea, Deep degloving injury left forearm, left ulna with middle 3rd, laceration left axilla, multiple superficial laceration in left arm and forearm, fracture maxilla, fracture mandible and grievous injuries all over the body. After the accident, the 1st respondent has taken treatment in the Manipal Hospital, Salem as inpatient from 13.07.2015 to 08.08.2015 for 27 days. The Medical Board examined the 1st respondent and certified that the 1st respondent suffered 100% permanent disability and issued Ex.C1 / disability certificate to that effect. The Tribunal considering the nature of injuries, percentage of disability and nature of work done by the 1st respondent, adopted multiplier method for awarding compensation towards loss of earning capacity and the same is proper.

15(i).It is the further case of the 1st respondent that at the time of accident, he was aged 25 years, working as a Mason and earning a sum of Rs.20,000/- per month. The 1st respondent has not produced any documentary evidence to prove his



avocation and income. The Tribunal in the absence of any documentary evidence with regard to avocation and income, following the Judgment of Division Bench of this Court dated **23.06.2017** made in **C.M.A.No.1929 of 2019**, in the case of **United India Insurance Company Vs. Ponniappan**, fixed a sum of Rs.7,500/- per month as notional income of the 1st respondent and the same is not excessive. The Tribunal in addition to granting compensation towards loss of earning capacity by adopting multiplier method, erroneously awarded a sum of Rs.2,00,000/- towards loss of amenities, for which the 1st respondent is not entitled to. Hence, a sum of Rs.2,00,000/- awarded by the Tribunal towards loss of amenities to the 1st respondent is liable to be set aside and it is hereby set aside. Considering the nature of injuries and period of treatment taken by the 1st respondent, the amounts awarded by the Tribunal under other heads are confirmed as the same are just and reasonable. 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	22,68,000/-	22,68,000/-	Confirmed
2.	Pain and sufferings	1,00,000/-	1,00,000/-	Confirmed
3.	Medical expenses	9,95,232/-	9,95,232/-	Confirmed



4.	Attendant charges	25,000/-	25,000/-	Confirmed
5.	Extra nourishment	20,000/-	20,000/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Loss of amenities	2,00,000/-	-	Set aside
8.	Damages to clothes	500/-	500/-	Confirmed
	Total	Rs.36,18,732/-	Rs.34,18,732/-	Reduced by Rs.2,00,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.36,18,732/- is hereby reduced to Rs.34,18,732/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, excluding the period of dismissal of default if any. 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.2403 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.II, Salem, at the first instance and recover the same from the 2nd respondent – owner of the lorry. On such deposit, the wife of the 1st respondent, viz., Sabena 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, by filing necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess



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amount lying in the credit of M.C.O.P.No.2403 of 2015, if the entire award amount has been already deposited by them. This Civil Miscellaneous Appeal is dismissed as against the respondents 3 & 4. Consequently, the connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.M., J)
28.10.2022

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Index : Yes / No
Internet : Yes / No

To

- 1.The Special Subordinate Judge No.II,
Motor Accidents Claims Tribunal,
Salem.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

V.M.VELUMANI, J.



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and

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