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C.M.A.No.3123 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3123 of 2010

National Insurance Co., Ltd.,
Having office at 175-A,
Great Cotton Road,
Tuticorin-628002.

..Appellant

Vs.

1.Easwaran
2.M.Sami
3.G. Durairaj

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 19.05.2010 made in MCOP.No.50 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court, Erode).

For Appellant : Mr.S.Arunkumar

For Respondents : No appearance for R1 and R3

Given up - R2



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J U D G M E N T

This appeal has been filed by the appellant/Insurance Company to set aside the judgment and decree dated 19.05.2010 made in MCOP.No.50 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate Court, Erode).

2. The brief facts of the case are as follows:

It is the case of the appellant that on 14.03.2004 at about 11.20 a.m., while the first respondent was riding his motorcycle bearing Regn.No.TN-39-Q-0174 along Perundurai to Coimbatore NH-47 Road near Sipcot Main gate from west to east on the left side of the road, a van bearing Regn.No.TN-69-E-9995 coming on the opposite side in a rash and negligent manner, dashed against the first respondent, due to which, he sustained severe head injury on the left side of the head and left eye and also injuries all over his body and also he sustained fracture in the right wrist and elbow. Immediately he was taken to KMCH,

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Hospital, Perundurai. After first aid, he was taken to the Lotus Hospital, Erode. He was treated there for two months as in-patient where he underwent three major surgeries. His vehicle also damaged heavily. Due to the said injuries sustained by him, he claimed a petition before the Tribunal claiming a compensation of Rs.6,00,000/-.

3. The learned counsel for the appellant has submitted that the Tribunal erred in granting huge compensation at Rs.2,54,450/- without any basis. He further submitted that the Tribunal ought to have dismissed the claim appreciating the evidences of RW1 and RW2 and Ex.R1. He further submitted that the Tribunal failed to note that the assessment of PW2 is not in accordance with the judgment reported in 1999 (8) Supreme Court 401 and 2003 (1) LW 81. He further submitted that it failed to note that PW2 has deposed that there is possibility of reduction in disability on proper treatment, while so the alleged 35% disability cannot be construed as permanent. He further



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submitted that the Tribunal has erred in applying 14 years multiplier when there is no loss of income. He further submitted that it erred in awarding 7.5% and default interest at 9% interest without following the Supreme Court Judgments and Reserve Bank of India Guidelines. Hence, he prays to allow this appeal.

4. The Tribunal, based on the oral and documentary evidences, has awarded a sum of Rs.2,54,450/- as total compensation payable by the appellant to the first respondent / claimant with interest and costs under the following heads:

Heads	Award Amount (Rs.)
Disability	1,47,000/-
Pain & sufferings	10,000/-
Extra Nourishment	5000/-
Transport Expenses	3000/-
Medical Expenses	89,450/-
Total	Rs.2,54,450/-



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5. Heard the learned counsel for the appellant and perused the materials available on record.

6. A perusal of Ex.P11 - copy of Accident Register would reveal that initially, the first respondent had taken treatment at KMCH, Hospital, Perundurai and thereafter, she had taken treatment at Lotus Hospital, Erode as seen from Ex.P8 and Ex.P13. Considering the injuries sustained by the claimant, the multiplier method adopted by the Tribunal while calculating the award amount under the head of disability is erroneous. Therefore, this court fix Rs.1000/- for each percentage for calculation of disability.

7. Insofar as the assessment of disability by the Tribunal is concerned, considering the nature of injuries, the doctor has assessed the disability at 35%. Hence, the disability fixed by the Tribunal is a correct assessment. It would be appropriate to calculate the disability of

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the claimant under the percentage method. Thus disability of the claimant as assessed by the Doctor/PW2 and taken by the Tribunal is a correct one and hence it does not need any modification. Thus disability is calculated at Rs.35000/-(35% x 1000).

8. The first respondent/claimant, was aged about 42 years at the time of accident. Due to the grievous injuries, suffered by the claimant, he is in need of more extra nourishment. Further, it is disputed that the claimant had taken treatment for two months in the Hospital and also he underwent three surgeries since he sustained grievous and multiple injuries on his head. During the said period, the claimant had incurred transport expenses. But the amount awarded by the Tribunal under the heads of Extra Nourishment, Pain and Sufferings, Transport expenses, seems to be very meagre. Hence the award of the Tribunal under the said heads needs significant modification.



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9. Considering the period of treatment of the claimant and nature of the injuries sustained, this Court is of the opinion that it would be appropriate to fix Rs.5000/- towards Transport; Rs.15,000/- towards Pain and sufferings and Rs.7,000/- towards Extra Nourishment; However, in view of the above said modification, the compensation is modified to Rs.1,51,450/- by this Court instead of Rs.2,54,450/-assessed by the Tribunal.

10. Insofar as the other heads of Medical Expenses are concerned, the assessment of the compensation under the said head by the Tribunal is a just compensation and it does not call for any interference by this Court. Thus, the break-up details of the modified compensation are as follows:

Heads	Amount (Rs.)
Disability	35,000
Pain and suffering	15,000



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Medical expenses	89,450/-
Extra Nourishment	7,000
Transport Expenses	5,000

Total **Rs.1,51,450/-**

11. In the result,

(i) the Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The total compensation of award amount is modified to Rs.1,51,450/- which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

(iii) The appellant/Insurance Company shall deposit the modified award amount, as awarded by this Court, 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 being made, the Tribunal is directed to transfer the award amount along with accrued interest as per

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the order of this Court to the claimant through RTGS within a period of two weeks thereafter.

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-Speaking Order
gv

To

1. The Motor Accident Claims Tribunal
(Chief Judicial Magistrate Court, Erode).

2. The Section Officer,
V.R.Section,
High Court, Madras.

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A.A.NAKKIRAN.,J.

Gv

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