



CMA.No.930 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.930 of 2010

MP.No.1 of 2010

The United India Insurance Company Limited
Divisional Office, Namakkal

Appellant

Vs

1. Palanisamy

2. V.Duraisamy

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 21.04.2009, made in MCOP.No.319 of 2006, by the Chief Judicial Magistrate (MACT) Namakkal.

For Appellant : Ms.I.Malar

For Respondents : Mr.T.A.Srinivasan-R1

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 21.04.2009, made in MCOP.No.319 of 2006, by the Chief Judicial Magistrate (MACT) Namakkal.

2. The 1st Respondent herein, has filed the claim petition before the Tribunal, seeking a compensation of Rs.4,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 25.12.2005. The claim petition was resisted, on various grounds, by the Appellant Insurance Company, by filing a counter. The 2nd Respondent, owner of the offending vehicle remained exparte. On the side of the claimant, PW.1 and



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PW.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the Insurance Company, RW.1 was examined and Ex.R1 was marked.

3. Finding that the claimant sustained injuries in the alleged motor road accident due to the rash and negligent driving of the driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs.2,53,400/- with interest at 7.5% p.a. from the date of the claim petition till the date of realization, with costs, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability (Rs.3500x12x15x28/100)	176400.00
2	Pain and Suffering	40000.00
3	Medical Expenses	31000.00
4	Transportation and Nutrition Expenses	6000.00
Total Compensation		253400.00

Aggrieved by the same, this appeal has been filed by the Appellant/ Insurance Company.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to narrate the entire facts in detail in respect of the accident.
6. In respect of quantum of compensation, according to the Appellant Insurance Company, the Tribunal erred in awarding compensation by adopting multiplier method and if at all, the Tribunal ought to have awarded disability compensation per per centage. According to the learned counsel for the 1st Respondent, the impugned compensation is just and proper.



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7. The injured claimant was aged 45 years old at the time of the accident, which took place in the year 2005. According to the claimant, he was earning a sum of Rs.6000/- p.m. as a milk vendor. As per the oral evidence of PW.2 Doctor and Ex.P10 disability certificate, the injured suffered fracture on hip joint, for which he undergone surgery and screw was fixed and suffered 28% disability. In the absence of any contra evidence, the physical disability assessment of P.W.2 Doctor has to be accepted in full. However, there is nothing on record to show that the claimant suffered any functional disability and also to prove his monthly income. As such, it will be appropriate to apply percentage method instead of multiplier method adopted by the Tribunal. Thus, the disability compensation is arrived at Rs.56,000/- (Rs.2000 x 28%).
8. In view of the injuries suffered by the claimant, he would not have gone for work at least for a period of five months as a milk vendor. Hence, a sum of Rs.30,000/- for the loss of income for five months is awarded. A further sum of Rs.5,000/- towards attendant charges and Rs.10,000/- towards extra nourishment are awarded. The compensation of Rs.6,000/- under transportation and nutrition is modified to Rs.5,000/- towards transportation charges. The compensation awarded under the other heads are confirmed.
9. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.1,77,000/- (Rupees one lakh seventy seven thousand only) with interest 7.5% p.a. from the date of

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the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Permanent Disability (28%x200)	56000.00
2	Loss of Income for 5 months	30000.00
3	Attendants Charges	5000.00
4	Extra Nourishment	10000.00
5	Transportation Expenses	5000.00
6	Pain and Suffering	40000.00
7	Medical Expenses	31000.00
Total Compensation		177000.00

The Appellant is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire award amount, with interest, by filing proper application. No costs. Consequently, the connected MP is closed.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

1. The Chief Judicial Magistrate (MACT) Namakkal.
2. The Record Keeper, VR Section, High Court, Madras

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