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C.M.A.No.917 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.917 of 2022
and C.M.P. No.6831 of 2022

National Insurance Co., Ltd.,
No.45, Moore Street,
3rd Floor, Chennai - 1

... Appellant

Vs

1.R.Krishnaraj @ Mathew
2.Hemalatha S.V.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.08.2021 in MCOP.No.711 of 2018 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.K.Balaji for R1

R2 - No appearance

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging the quantum of compensation awarded by the Tribunal in MCOP.No.711 of



2018, dated 26.08.2021, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. The first respondent is the claimant in MCOP.No.711 of 2018 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai. He filed the claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.01.2017.

3. According to the first respondent, on the date of accident i.e., on 26.01.2017 at about 05.30 p.m. while he was riding his two wheeler bearing Registration No.TN-03-M-9382 in Thirumangalam Shanthi Colony, 4th Avenue, 114th Block in front of TNHB Mochblu Shop, Chennai - 40, the driver of the car bearing Registration No.TN-13-C-8516 drove the same in a rash and negligent manner without observing the Traffic Rules, dashed against the two wheeler of the first respondent, as a result of which he sustained grievous injuries.

4. The second respondent, owner of the car, remained *ex-parte* before the Tribunal.



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5. The appellant/Transport Corporation filed counter statement, denying all the averments made in the claim petition and and stated that the accident took place due to the negligent act of the driver of the car; they denied the age, income and nature of injuries of the appellant are denied; and stated that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined himself as P.W.1 and marked eight documents as Exs.P1 to P8. On the side of the appellant/Insurance Company no oral and documentary evidence was adduced. The Disability Certificate issued by the Medical Board was marked as Ex.C-1.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent act of the driver of the car and directed the appellant/Insurance Company to pay a sum of Rs.5,57,746/- as compensation to the first respondent.

8. The learned counsel for the appellant/ Insurance Company submitted that the Tribunal had erroneously applied the multiplier method



while awarding compensation to the first respondent. The Medical Board assessed the disability at 23% and found the following injuries:-

"His/Her disability is Post traumatic sequalar in left lower limb due to RTA-complete ACL tear with lateral collateral ligament and his/her percentage is 23% (Twenty three) and medial muscles tear"

He further submitted that the first respondent took treatment only as an out patient. From the nature of injuries it cannot be inferred that the first appellant suffered functional disability and consequently, loss of income on account of the same. Therefore, he submitted that the compensation is excessive and ought to be reduced.

9. Though notice was served on the second respondent, none had entered appearance on her behalf before this Court.

10. Per contra, the learned counsel for the first respondent submitted that the Tribunal had rightly applied the multiplier method on the basis of the certificate issued by the Medical Board. There is no reason to interfere with the said finding of the Tribunal. Further, the Tribunal had awarded meagre sum as compensation under the other heads. Therefore, the



learned counsel submitted that there is no reason to interfere with the award of the Tribunal and prayed for dismissal of the appeal.

11. The only question involved in this instant appeal is whether the Tribunal had awarded just and reasonable compensation to the first respondent.

12. The first respondent had examined himself as P.W.1. The Medical Board had examined the first respondent and assessed the percentage of the disability at 23%, considering the nature of the injuries suffered by the first respondent. However, there is nothing in the disability certificate to suggest that the first respondent suffered any functional disability and therefore, unable to pursue his avocation after the accident. The Tribunal had not given any reasons for adopting the multiplier method. There is no evidence adduced on the side of the first respondent to show that he is entitled for compensation by adopting multiplier method. The nature of injuries extracted above suggest that it does not warrant compensation by adopting the multiplier method. However, accepting the disability certificate issued by the Medical Board, the compensation under the head "disability" has to be $\text{Rs.}5,000 \times 23\% = 1,15,000/-$.



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13. However, this Court finds that the compensation under the other heads needs to be enhanced. The Tribunal had taken the notional income of the deceased as Rs.8,000/-. This Court is of the view that the notional income taken by the Tribunal is meagre. This Court is of the view that considering the age, avocation and the year of accident, it would be just and reasonable to fix the notional income of the first respondent at Rs.15,000/- per month. Considering the fact that the first respondent would not have pursued his job for a period of three months, he is entitled to a sum of Rs.45,000/- under the head "Loss of income".

14. In the facts and circumstances of this case, the first respondent is also entitled to a sum of Rs.25,000/- under the "Pain and suffering", Rs.10,000/- under the head "Transport expenses", Rs.15,000/- under the head "Nutrition expenses", Rs.20,000/- under the head "Loss of amenities" and Rs.10,000/- under the head "Mental agony" and the same are enhanced accordingly.

15. Thus, the compensation awarded by the Tribunal is modified as follows:-



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	5,25,504	1,15,000	Reduced
2.	Medical Expenses	3,242	3,242	Confirmed
3.	Pain and suffering	5,000	25,000	Enhanced
4.	Transportation Expenses	2,000	10,000	Enhanced
5.	Nutrition expenses	5,000	15,000	Enhanced
6.	Damages to cloth	2,000	2,000	Confirmed
7.	Loss of amenities	10,000	20,000	Confirmed
8.	Mental agony	5,000	10,000	Enhanced
	Total	Rs.5,57,746/-	Rs.2,00,242/-	Reduced to Rs.3,57,504

16. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.5,57,746/- awarded by the Tribunal is hereby reduced to Rs.2,00,242/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any). The appellant/Insurance Company is directed to deposit the modified 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 modified award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn on the basis of apportionment fixed by the Tribunal. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.711 of 2018 on the file of Motor Accident Claims Tribunal, IV-Small Causes Court, Chennai, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

09.08.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
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To

1. The IV Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.
- 2.The Section Officer, VR Section
High Court of Madras,
Chennai – 600 104.



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SUNDER MOHAN,J.

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