



C.M.A.No.2084 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.2084 of 2021
and
C.M.P.No.11331 of 2021

The New India Assurance Co. Ltd.,
Rep. by its Divisional Manager,
Big Bazaar Street, Tiruvannamalai.

.. Appellant

Vs.

1.K.Jagadeesan

2.Karunanithi

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 03.06.2019 made in M.C.O.P.No.96 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

For Appellant : Mr.M.Krishnamoorthy

For R1 : No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company against the judgment and decree passed in M.C.O.P.No.96 of 2012 on 03.06.2019 by the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi, questioning the quantum of compensation.

2.The claim petition was filed by the claimant under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.70,00,000/- for the injuries said to have been suffered in the accident that occurred on 23.02.2012.

3.The Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence, has granted compensation of Rs.3,12,097/- with 6% interest from the date of restoration of the OP till the date of deposit.

4.Despite the receipt of notice, the 1st respondent / claimant did not either choose to appear in person or engaged the counsel.



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5.The learned counsel for appellant – Insurance Company would strenuously argue that the claimant having sustained head injury and ribs fracture, had taken treatment as inpatient from 23.02.2012 to 08.03.2012 at Christian Medical College Hosptial, Vellore. He would stress upon the fact that as per the claim petition, he was stated to be a Senior Foreman [Carpentry] in M/s.PSCPL Infrastructure Ltd., and earning a sum of Rs.23,000/- per month. To evidence the said fact, Ex.P14 – appointment order has been marked. But, no person connected to the said document was examined and proved. However, the Tribunal relying upon the said document has fixed the income of the claimant at Rs.23,000/- is patently incorrect. The learned counsel further contended that though the Medical Board has issued NIL disability certificate, the Tribunal has granted compensation for loss of income for six months, which is also incorrect and prayed for reduction in respect of the sum i.e., Rs.1,38,000/- granted for partial loss of earning.

6.Heard the learned counsel for the appellant and perused the entire materials on record.



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7.It is seen from the evidence of P.W.1 that on 23.02.2012 during night hours at 08.15 P.M., when the claimant was proceeding in the motorcycle bearing Registration No.TN 23 AH 5423 along the left side of the Vellore – Ambur road at the point of Kannikapuram Aadhir Aspak Shoe Company, a car bearing Registration No.TN 23 AE 5423, came in a rash and negligent manner in an uncontrollable speed, hit him behind. Due to the said impact, he was thrown out from the motorcycle and sustained grievous injuries, is not in dispute.

8.It could be seen from the records namely, Ex.P3 – Accident Register that he had taken treatment at the first instance at the Government Hospital, Ambur and thereafter on the same day, he was taken to Christian Medical College Hospital, Vellore, where he had taken treatment from 23.02.2012 to 08.03.2012. It appears that the claimant was given Physiotherapy as per Ex.P21 and he was also given speech therapy as per Ex.P22. Ex.P24 – Medical Report reflects the fact that the claimant had taken further treatment at Premji Neuro Hospital at Vellore.

9.From a perusal of the medical records, it could be seen that the



claimant was undergoing physiotherapy as well as speech therapy to indicate the fact that he was under treatment for long time. It cannot be denied that if a person suffers from neuro problem, it takes long time to get cured. Therefore, taking into account of the above said difficulties undergone by the claimant, the loss of income for five months is granted which works out to Rs.12,000/- X 5 months = Rs.60,000/-.

10.As regards the avocation, it is the evidence of P.W.1 – injured that he was working as a Senior Foreman [Carpentry] in M/s.PSCPL Infrastructure Ltd., Hyderabad and was earning a sum of Rs.23,000/- per month. To evidence the said fact, Ex.P17 – provisional certificate issued by the construction industry development council is marked. With regard to the proof of income, Ex.P15 / salary certificate is marked, which shows that his net pay is Rs.23,000/- per month. But it is pertinent to note that no person connected to the said document was examined to prove the nature of work and income details. The Medical Board having assessed the claimant, has issued NIL report. The date of accident is 23.02.2012. Though as regards the nature of work and income, no witness was examined, this Court deems fit to fix the income of the claimant at Rs.12,000/- per month.



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11.For transportation expenses, an amount of Rs.15,000/- is granted in addition to the amount awarded by the Tribunal. For extra nourishment, a sum of Rs.5,000/- is granted in addition to the amount already awarded by the Tribunal.

12.With regard to other aspects, the award of the Tribunal appears to be reasonable and needs no interference.

13.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)
1.	Loss of earning	1,38,000/-	Reduced by 78,000/-
2.	Pain and sufferings	30,000/-	Confirmed
3.	Extra nourishment	5,000/-	Enhanced by 5,000/-
4.	Attendant charges	25,000/-	Confirmed
5.	Loss of amenities	5,000/-	Confirmed
6.	Medical expenses	1,06,097/-	Confirmed
7.	Transportation	3,000/-	Enhanced by 15,000/-
	Total	Rs.3,12,097/-	Reduced by Rs.58,000/-



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14.In the result,

14(i).This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,12,097/- is hereby reduced to Rs.2,54,000/- together with interest at the rate of 7.5% per annum from the date of restoration of filing (i.e., from 29.04.2012) till the date of deposit.

14(ii).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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.96 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Vaniyambadi.

14(iii).On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any already withdrawn by filing necessary cheque application before the Tribunal.

14(iv).The appellant-Insurance Company is permitted to withdraw the



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excess amount lying in the credit of M.C.O.P.No.96 of 2012, if the entire award amount has been already deposited by them. Consequently the connected Miscellaneous Petition is closed. No costs.

30.06.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Vaniyamabadi.

2.The Section Officer,
VR Section,
High Court,
Madras.

R.KALAIMATHI, J.

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