



C.M.A.No.2032 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2032 of 2018
and C.M.P.No.15841 of 2018

M/s.Reliance General Insurance Co.Ltd.,
Lakhshmi Buildings, Omalur Main Road,
Near A.N.S.Jewellery, Swarnapuri,
Salem-4

... Appellant/2nd Respondent

Vs

1.Vetrivel

... Respondent-I/Petitioner

2.P.Shanmugam

... Respondents-II/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree dated 12.02.2018 made in M.C.O.P.No.2408 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant

... M/s.S.Arun Kumar

For Respondents

... Mr.Ma.P.Thangavel [R1]

... Notice not ready [R2]



C.M.A.No.2032 of 2018

JUDGMENT

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Aggrieved by the impugned award dated 12.02.2018 passed by the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem in M.C.O.P.No.2408 of 2015, the Appellant/Insurance Company has filed the present appeal questioning the liability as well as the quantum of compensation fixed by the Tribunal.

2. On 12.09.2015, when the claimant was riding the Two wheeler bearing Regn No.TN-90-AS-1062 Honda shine, another Two wheeler bearing Regn No.TN-90-6375 belonging to the 2nd respondent, which was coming from service road suddenly crossed the road and dashed against the claimant's Two wheeler, as a result of which, the claimant sustained grievous injuries all over his body. Aggrieved by which, the claimant filed a claim petition before the Motor Accident Claims Tribunal, Special Sub Court No.1, Salem in M.C.O.P.No.2408 of 2015 claiming compensation towards the injuries sustained by him.



C.M.A.No.2032 of 2018

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined P.W.2 and marked Ex.P-1 to Ex.P-14. On the side of the respondents R.W.1 was examined and Ex.R-1 and R-2 were marked. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.3,92,909/- under various head and fastened the liability against the insured vehicle. Aggrieved by the said award, the Appellant/Insurance Company has filed the present Appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that it is the claimant who had driven the vehicle in a rash and negligent manner and dashed against the 2nd respondent's vehicle and thus, the claimant is solely responsible for the said accident. Despite the First Information Report having been registered against the claimant, the Tribunal had erroneously fastened the negligence wholly on the part of the 2nd respondent which is not sustainable. Further, the quantum of compensation awarded by the Tribunal under various heads is highly excessive which requires reconsideration. Accordingly, he prayed for allowing this appeal.



C.M.A.No.2032 of 2018

5. Per contra, learned counsel appearing for the 2nd respondent/insurance company submitted that the Tribunal after considering all the oral and documentary evidences placed in support of the claim petition and also the relevant factors, has rightly fixed the negligence as well as the quantum of compensation which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the Appellant/Insurance Company as well as the 1st respondent/Claimant and perused the materials available on record.

7. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the insurance company has challenged the liability as well as the quantum of compensation awarded by the Tribunal. It is claimed that the 2nd respondent had suddenly crossed the road by his Two-wheeler, which was the cause for the said accident resulting in dashing of both the vehicles of the claimant as well as the 2nd respondent. Even from the manner in which the said accident had taken place, it is evident that



C.M.A.No.2032 of 2018

the claimant's vehicle had also been driven in a rash and negligent manner thereby he lost the control of his vehicle suddenly on seeing the offending vehicle that was crossing the road. So to that extent, definitely there is contributory negligence on the part of the claimant. While so, the entire liability cannot be fastened against the driver of the insured vehicle. Therefore, this Court is inclined to fix 20% of contributory negligence on the part of the claimant and 80% on the part of the 2nd respondent/owner of the insured vehicle.

8. On the question of compensation, this Court perused the impugned award passed by the Tribunal whereby the Tribunal had fixed the notional income at Rs.5,000/- and has awarded a sum of Rs.2,40,000/- (Rs.5000/- * 12 * 16 * 25%) under the head Loss of earning capacity by adopting multiplier method. However, the Court is ordained with the task of finding out the injuries sustained by the claimant and the toll that the injuries would have on the day to-day functioning of the claimant and the earning that would be curtailed on the basis of the injuries sustained, which would be the basis to adopt multiplier method. A careful perusal of the injuries sustained by the



C.M.A.No.2032 of 2018

claimant reveal that it would not have a lasting impact on the earning capacity of the claimant, so as to necessitate this Court to adopt multiplier method.

Therefore, the adoption of multiplier method by the Tribunal is erroneous and hence no compensation can be awarded under the Loss of earning capacity.

Insofar as the disability suffered by the claimant, the doctor P.W.2 had assessed 33.6% of disability, however, the Tribunal had fixed the whole body disability at 25%. Considering the nature of injuries suffered by the claimant, this Court feels that fixing the disability at 30% would be just and reasonable. Accordingly, this Court awards a sum of Rs.1,50,000/- by adopting Rs.5,000/- per percentage of disability.

9. Further the Tribunal has awarded a sum of Rs.25,000/- towards Pain and sufferings; Rs.10,000/- towards Transport to Hospital & Rs.20,000/-; Rs.72,909/- towards Medical expenses. This Court finds that the compensation awarded under said heads are just and reasonable and does not require any interference. However, no compensation has been awarded under the head loss of income during the treatment period in which the claimant was under treatment. Therefore, this Court awards a sum of Rs.45,000/- under the head



C.M.A.No.2032 of 2018

'Loss of Income during the Treatment' for a period of five months, by fixing the monthly income at Rs.5,000/- as no proof of income has been filed. Further, this Court feels that a sum of Rs.50,000/- awarded under the head loss of amenities is without any basis as there is no provision for granting compensation under the head loss of amenities and hence no compensation can be awarded under the said head and, accordingly, the same is deleted.

10. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1.	Loss of earning capacity	Rs.2,40,000/-	-
2.	Pain and sufferings	Rs.25,000/-	Rs.25,000/-
3.	Transport to Hospital	Rs.10,000/-	Rs.10,000/-
4.	Nutrition	Rs.20,000/-	Rs.20,000/-
5.	Medical Expenses	Rs.72,909/-	Rs.72,909/-
6.	Disability	-	Rs.1,50,000/- (30 * Rs.5000/-)



WEB COPY



C.M.A.No.2032 of 2018

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
7.	Loss of Amenities	Rs.25,000/-	-
8.	Loss of income during during treatment period	-	Rs.45,000/- (Rs.15000 * 3)
	Total	Rs.3,92,909/-	Rs.3,22,909/-

11. Accordingly, the appeals are partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.3,92,909/- to Rs.3,22,909/-**. The Appellant-Insurance Company is directed to deposit 80% of the modified amount to the credit of M.C.O.P.No.2408 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. The claimant shall forfeit the remaining 20% of the modified award amount due to his own contributory negligence. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in



C.M.A.No.2032 of 2018

the present appeal.

WEB COPY

01.11.2023

Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal,
Special Sub Court No.1, Salem.

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



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C.M.A.No.2032 of 2018

M.DHANDAPANI, J

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C.M.A.No.2032 of 2018

01.11.2023