



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CMA.No.1165 of 2022
and C.M.P.No.8439 of 2022

The Manager,
M/s.Iffco Tokio General Insurance Company Limited,
GSN Arcade, 2nd Floor,
Near Vemala Kaluanamandapam,
Bye pass Road, Hosur,
Krishnagiri District. ... Appellant

Vs.

1.Madhu
2.P.Madesh ... Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.02.2019 and made in MCOP.No.413 of 2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant : Ms.C.Harini
for M/s.M.B.Gopalan Associates



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For Respondents : Mr.S.Murugan for R1
Notice dispensed with for R2

JUDGMENT

The Insurance Company has filed this instant appeal challenging the quantum of compensation.

2. The first respondent/claimant filed the claim petition stating that on 07.08.2016, at about 22.00 hours, while he was proceeding in his cycle rickshaw, a Honda Scooter bearing Registration No.TN-24-AE-7616 belonging to the second respondent herein, ridden by its rider in a rash and negligent manner dashed against the first respondent's rickshaw, as a result of which the first respondent sustained grievous injuries.

3. The second respondent, owner of the offending vehicle remained ex-parte before the Tribunal.

4. The appellant/Insurance Company resisted the claim



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petition stating that the accident took place only due to the rash and negligent riding of the cycle-rickshaw by the first respondent herein and hence, the appellant/Insurance Company is not liable to pay the compensation.

5. The first respondent examined himself as P.W.1 and marked six documents as Exs.P1 to P6. On the side of the appellant/Insurance Company neither oral nor documentary evidence was adduced.. The Disability Certificate issued by the Medical Board is marked as Ex.C-1.

6. The Tribunal after considering the oral and documentary evidence, awarded compensation of sum of Rs.6,90,000/- to the first respondent.

7. The learned counsel for the appellant/Insurance Company submitted that though the Medical Board has assessed the disability at



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20% partial permanent, the Tribunal had assessed the functional disability at 40% erroneously. Further, during the examination of the first respondent before the Tribunal, the learned Judge had observed that there is no visible signs of any fracture in the right hand or in the neck of the first respondent. The learned counsel therefore submitted that the tribunal erred in fixing 40% functional disability and had also taken into consideration the future prospects and hence, prayed for reduction of compensation amount.

8. Per contra, the learned counsel for the first respondent submitted that the compensation awarded by the Tribunal is just and reasonable and therefore, does not call for any interference. Hence, the learned counsel prayed for dismissal of the appeal.

9. Learned counsel for the appellant/Insurance Company submitted that the second respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice



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to the second respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to the second respondent is dispensed with.

10. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the first respondent and perused all the materials available on record before this Court.

11. On perusal of records, it is seen that the Medical Board had assessed the disability of the first respondent at 20% partial permanent. The first respondent had suffered a fracture in the right shoulder. It is also seen that the Tribunal during the examination of the first respondent had observed that, on appearance of the first respondent, he did not suffer any inconvenience either in the right hand or in the neck.



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12. Considering the above facts, this Court is of the view that the finding of the Tribunal fixing the functional disability at 40% may not be appropriate. However, since, the avocation of the first respondent involves physical labour, this Court is of the view that it would be just and reasonable to fix the functional disability at 20%. In the facts and circumstances of the case, the first respondent would not be entitled to addition towards the future prospects. However, this Court is of the view that the notional income can be fixed as Rs.7,500/- per month. Thus, the compensation under the head “Loss of earning power” has to $\text{Rs.7,500/-} \times 12 \times 16 \times 20/100 = \text{Rs.2,88,000/-}$. The award of the Tribunal under the other heads are just and reasonable and is confirmed.

13. Thus the award of compensation awarded by the Tribunal is modified as follows:-

S.No	Description	Amount	Amount	Award
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		awarded by Tribunal (Rs)	awarded by this Court (Rs)	confirmed or enhanced or granted or reduced
1.	Loss of earning power	6,24,000	2,88,000	Reduced
2.	Transport, nutrition and attender charges	15,000	15,000	Confirmed
3.	Pain and sufferings	25,000	25,000	Confirmed
4.	Loss of amenities and enjoyment of life	25,000	25,000	Confirmed
5.	Damages to clothing and articles	1,000	1,000	Confirmed
	Total	Rs.6,90,000/-	Rs.3,54,000	Reduced by Rs.3,36,000/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.6,90,000/- awarded by the Tribunal is hereby reduced to Rs.3,54,000/- together with interest at the rate of 7.5% per annum from the date of petition till the



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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 four 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. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.413 of 2017 on the file of Motor Accident Claims Tribunal, Special Subordinate Court, Krishnagiri, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

11.09.2023

Index: Yes/No

Internet: Yes/No

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Speaking order: Yes/ No

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To

1. The Special Subordinate Court,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer, VR Section
High Court of Madras,
Chennai – 600 104.

SUNDER MOHAN,J.

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