



C.M.A.No.1092 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1092 of 2023

and C.M.P.No.10461 of 2023

The United India Insurance Company Ltd.,
Third Party Hub, Silingi Building,
No.134, Greams Road,
Chennai - 600 006.

...Appellant

Vs.

1.Rathinavel Pandiyan
2.Ramky Enviro Engineers Ltd.,
No.138, Chennakuppam Village,
Sriperumbudur Taluk,
Kancheepuram District.

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 14.11.2022 in M.C.O.P.No.812 fo 2018 on the file of the Motor Accident Claims Tribunal, II-Judge, Court of Small Causes, Chennai.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.Amar D.Pandiyan for R1

R2- No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award dated 14.11.2022 in M.C.O.P.No.812 of 2018 on the file of the Motor Accident Claims Tribunal, II-Judge, Court of Small Causes, Chennai.

2. The first respondent herein is the claimant in M.C.O.P.No.812 of 2018 on the file of the Motor Accident Claims Tribunal, II-Judge, Court of Small Causes, Chennai. He filed the Claim Petition claiming a sum of Rs.15,00,000/- as compensation for the grievous injuries sustained by him, in the accident that took place on 27.11.2017.

3. According to the first respondent, on 26.12.2017 at about 06.50 a.m., while he was riding his two wheeler bearing Registration No.TN-T-0205 at Sardar Patel Road, proceeding from West to East, a lorry bearing registration No.TN-21-AL-1280 which was proceeding in the same direction in a rash and negligent manner came from behind and dashed against the two wheeler of the



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first respondent; due to which he sustained grievous injuries. Hence, first respondent filed claim petition claiming a sum of Rs.15,00,000/- as compensation.

4. The second respondent, who is the owner of the lorry was *set ex-parte* before the Tribunal.

5. The appellant/Insurance Company filed counter statement, denying all the averments made in the Claim Petition and stated that the accident was not due to the rash and negligent act of the driver of the lorry belonging to the second respondent and contended that the driver of the lorry was not responsible for the accident. In any event, the compensation claimed 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 Exs.P1 to P13. The appellant/Insurance Company did not let in any oral or documentary evidence. The disability certificate issued by the Medical Board was marked as Ex.C1.



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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 lorry belonging to the second respondent and directed the appellant/Insurance Company to pay a sum of Rs.22,56,500/- as compensation to the first respondent.

8. Challenging the quantum of compensation awarded by the Tribunal, the appellant has filed the instant appeal.

9. Mr.D.Bhaskaran, learned counsel for the appellant/Insurance Company submitted that the Tribunal ought not to have adopted the multiplier method in the absence of any evidence to show that the victim was unable to pursue any job on account of the injuries. The learned counsel further submitted that in any case the award of compensation is liable to be set aside on the other grounds as well. The Tribunal ought not have taken 50% as future prospects as admittedly the victim was working in a private concern. The



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Tribunal had accepted the disability certificate issued by the Medical Board without assessing the functional disability leading to loss of income.

10. The learned counsel further submitted that in any case ought to have applied the principle laid down in ***Rajkumar Vs. Ajay Kumar*** reported in ***2011 (1) SCC 343***. Even assuming that there was functional disability, the Tribunal ought not to have taken 31% as functional disability. The Tribunal ought not to have awarded compensation under the head "Loss of earning" for the treatment period at Rs.51,405/- as the compensation for disability was awarded by adopting multiplier method. Further, the Tribunal ought not to have awarded compensation under the head "Loss of amenities" in the absence of any evidence to establish the same. Hence, prays for allowing the appeal.

11. Per contra, the learned counsel appearing for the first respondent submitted that the victim was examined by the Medical Board and the disability certificate issued by the Medical Board, marked as Ex.C1 cannot be faulted. The Tribunal, on the basis of the said report had correctly applied the multiplier method for awarding compensation. The learned counsel however, fairly



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submitted that the Tribunal ought not to have taken 50% towards future prospects as the first respondent was working in a private concern and hence, the Tribunal ought to have taken 40% towards future prospects. The learned counsel further submitted that the compensation awarded under other heads are justified and need not be interfered with.

12. Heard the learned counsel for the appellant/ Insurance Company and the learned counsel for the first respondent and perused the materials/ documents available on record before this Court.

13. This Court on perusal of the records and on hearing the submissions made by the learned counsel finds that there is no dispute with regard to the negligence. It is seen that admittedly the Medical Board has assessed the disability of the first respondent as 31%. However, the same cannot be taken as the functional disability for the whole body. This Court finds that the Tribunal had not assessed the functional disability for computing "Loss of income". It is seen that although the first respondent has produced the disability certificate, marked as Ex.C1 along with X-ray and photographs of the



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injuries, this Court is of the view that the functional disability can be fixed at 10% which is reasonable in the facts of the present case. The first respondent had produced Ex.P6 (Salary slip and statement), to show his salary as Rs.17,135/- p.m. Hence, the income of the first respondent is fixed at Rs.17,135/-.

14. Further, this Court is of the view that the Tribunal had erroneously taken 50% towards the future prospects; when admittedly, the first respondent was working in a private concern. Hence, the enhancement towards future prospects has to be 40%. Since, the deceased was 24 years at the time of the accident, the multiplier applicable is 18. Hence, the compensation under the head "Disability" is calculated as follows:- Rs.17,135/- + Rs.6,854 (17,135 x 40%) x 12 x 18 x 10% = Rs.5,18,162/-.

15. That apart, this Court finds that the Tribunal ought not to have awarded compensation under the head "Loss of earning during treatment" at Rs.51,405/- as compensation had been awarded for disability by adopting multiplier method. Hence, the compensation under the head "Loss of earning



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during treatment" is set aside. Similarly, the first respondent has not proved that he suffered discomfort due to the injuries sustained by him in the accident. Hence, the compensation under the head "Loss of amenities" at Rs.50,000/- is also set aside. The compensation awarded by the Tribunal under other heads are just and reasonable and hence, they are confirmed.

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

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	17,21,005	5,18,162	reduced
2.	Pain and Suffering	50,000	50,000	confirmed
3.	Loss of earning during treatment	51,405	----	Set aside
4.	Medical Expenses	3,24,060	3,24,060	confirmed
5.	Loss of Amenities	50,000	----	Set aside
6.	Attender charges	20,000	20,000	confirmed
7.	Transportation Charges	20,000	20,000	confirmed



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8.	Extra nourishment	20,000	20,000	confirmed
	Total	22,56,470 Rounded off to Rs.22,56,500/-	9,52,222 Rounded off to Rs.9,52,200/-	Reduced by a sum of Rs.13,04,300/-

17. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.22,56,500/- awarded by the Tribunal is hereby reduced to Rs.9,52,200/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. 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. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.812 of 2018 on the file of Motor Accident Claims Tribunal, (II Judge, Court of Small Causes Court), Chennai, if the entire award amount has



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already been deposited by them. Consequently, connected Miscellaneous
Petition is closed. No costs.

17.07.2023

Index: Yes/No
Internet: Yes/No
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To

- 1.The Motor Accident Claims Tribunal,
II-Judge, Court of Small Causes, Chennai.
- 2.The Section Officer
VR Section, High Court of Madras.



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SUNDER MOHAN,J.

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