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C.M.A.No.2140 of 2023
and C.M.P.No.20700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.2140 of 2023
and C.M.P.No.20700 of 2023

The Divisional Manager
National Insurance Company Ltd.,
Pondicherry-1

... Appellant

Versus

1.Premkumar
2.Vijayalakshmi

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 16.08.2022 made in M.C.O.P.No.279 of 2019, on the file of the Motor Accident Claims Tribunal, Principal Sub-court, Cuddalore.

For Appellant	: Mr.C.Paranthaman
For R1	: Mr.A.G.F.Terry Chella Raja for Ms.M.Malar

JUDGMENT

This appeal has been filed by the Insurance Company, challenging the finding with regard to negligence as well as the quantum of compensation awarded by the Tribunal in M.C.O.P.No.279 of 2019, dated 16.08.2022.



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2.The 1st respondent herein filed a claim petition, stating that on 06.11.2018, at about 17.00 hours, when he was riding his motorcycle (Scooty Pep), a vehicle belonging to the 2nd respondent herein, came in the opposite direction in a rash and negligent manner and dashed against the motorcycle belonging to the 1st respondent; that as a result of which, 1st respondent sustained grievous injuries and multiple fractures all over his body including comminuted fracture on his left leg; and thereby, the appellant/Insurance Company is liable to pay compensation.

3.The 2nd respondent herein remained *ex-parte* before the Tribunal.

4.The appellant/Insurance Company filed a counter stating that the accident did not take place due to the negligence of the rider of the offending vehicle; that the 1st respondent had violated the traffic regulations; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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5.Before the Tribunal, the 1st respondent examined himself as P.W.1 and marked Exs.P1 to Ex.P8. The appellant had not examined any witness or marked any document. The disability certificate issued by the Medical board is marked as Ex.C1.

6.The Tribunal, after considering the oral and documentary evidence, held that the accident took place only due to the rash and negligent riding by the rider of the motorcycle insured with the appellant and directed the appellant to pay a sum of Rs.7,50,641/- as compensation to the 1st respondent.

7.Aggrieved over the award passed by the Tribunal, the appellant-Insurance Company filed the present appeal challenging the findings of the Tribunal with respect to the negligence as well as quantum of compensation.

8.The learned counsel for the appellant submitted that the accident took place only due to negligence on the part of the 1st respondent and the Tribunal had erroneously fixed the negligence on the rider of the



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motorcycle insured with the appellant. He further submitted that the Tribunal had erroneously adopted multiplier method though, the 1st respondent had not established that he had suffered any functional disability and loss of income. Therefore, he prayed for allowing of the appeal.

9.The learned counsel for the appellant submitted that the 2nd respondent remained *ex-parte* before the Tribunal and therefore, he requested this Court to dispense with notice to the 2nd respondent and he had also made an endorsement to that effect. Hence, notice to the 2nd respondent is dispensed with.

10.The learned counsel for the 1st respondent *per contra* submitted that the Tribunal rightly found that the accident took place due to the negligence of the rider of the offending vehicle based on Ex.P1- First Information Report, Ex.P2- copy of Accident Report and Ex.P7- copy of MVI Report besides the deposition of PW1; and that therefore, there is no infirmity in the finding of the Tribunal fixing the negligence on the part of the rider of the offending vehicle.



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11.As regards compensation, the learned counsel submitted that even assuming that the functional disability is reduced, the notional income taken by the Tribunal was very meagre. Taking into consideration the said fact, the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

12.The questions involved in the instant appeal are as follows:

1.Whether the Tribunal was right in fixing the negligence on the rider of the motorcycle insured with the appellant?

2.Whether the award of compensation is just and reasonable?

13.On perusal of the records, it is seen that the 1st respondent had examined himself as P.W.1 to prove the manner of the accident. The appellant had not let in any rebuttal evidence. The Tribunal had also taken into consideration Ex.P1, FIR, Ex.P4-Motor Vehicle Inspector's report of the offending vehicle, Ex.P7-Motor Vehicle Inspector's report for the claimant's vehicle to hold that the accident took place due to the



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negligence of the rider of the offending vehicle. There is no infirmity in the finding of the Tribunal and hence the same is confirmed.

14.As regards the quantum, it is the main contention of the appellant that the 1st respondent had not suffered any functional disability. It is seen from Exs.P2 and Ex.P3, that the 1st respondent suffered Grade II compound comminuted fracture in tibia 1/3 left and a surgery was done on 07.11.2018. The Medical Board assessed the disability as 27% on whole body. The 1st respondent had also deposed before the Tribunal that he was working as a Fisherman. In the light of the injuries suffered by the 1st respondent and the avocation, this Court is of the view that the Tribunal was right in holding that the appellant had suffered functional disability to the extent of 27%. Hence, there is no infirmity and no interference is called for in the said finding. However, since the Tribunal had adopted multiplier method to award just compensation, the compensation awarded under the head temporary loss of Income at Rs.27,000/- is liable to be set aside. This Court is of the view that compensation of Rs.30,000/- under Pain and sufferings and mental agony, can be reduced to Rs.10,000/-. The award under the other



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heads is just and reasonable and the same are confirmed. 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)	Award confirmed or enhanced or granted
1.	Partial permanent disability	5,24,880	5,24,880	Confirmed
2.	Transport to Hospital	20,000	20,000	Confirmed
3.	Extra Nourishment	10,000	10,000	Confirmed
4.	Attender's Charge	5,000	5,000	Confirmed
5.	Pain and sufferings, mental agony	30,000	10,000	Reduced
6.	Loss of amenities	20,000	20,000	Confirmed
7.	Medical Expenses	1,13,761	1,13,761	Confirmed
7.	Temporary loss of Income	27,000	-	Set aside
	Total	7,50,641	7,03,641	Reduced by Rs.47,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,50,641/- is hereby reduced to Rs.7,03,641/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The



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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 (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the 1st respondent/claimant is permitted to withdraw the entire award amount now determined by this Court, along with interest and cost, less amount already withdrawn, if any. No costs. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.279 of 2019, if the entire award amount has already been deposited by them. Consequently, connected miscellaneous petition is closed. No costs.

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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To:

- 1.The Sub Court,
The Motor Vehicle Accident Tribunal,
Cuddalore.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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