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C.M.A.No.652 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.652 of 2021
and CMP.No.4003 of 2021

The Divisional Manager,
National Insurance Company Limited,
Divisional Office X,
Hero Honda Vertical,
No.101-106, BMC House,
Connaught Place,
New Delhi 110 001.

... Appellant

vs.

1.Saravanan
2.M.Nagaraj
(2nd respondent remained exparte
before the Tribunal)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment dated 22.06.2020 made in M.A.C.T.O.P.No.724 of 2016, on the file of the Motor Accident Claims Tribunal (Special District Court) Dharmapuri.

For Appellants : Ms.N.B.Sureka

For R1 : Mr.V.Kumaravelan



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JUDGMENT

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The Civil Miscellaneous Appeal is filed to set aside the Decree and Judgment dated 22.06.2020 made in M.A.C.T.O.P.No.724 of 2016, on the file of the Motor Accident Claims Tribunal (Special District Court) Dharmapuri.

2. The said appeal is filed by the Insurance company challenging the negligence as well as the quantum of compensation. The parties will be referred to as per their ranking in the claim petition.

3. The brief facts of the case are that on 05.06.2016 at about 8.00 p.m., when the claimant was riding a TVS Victor motorcycle, the first respondent's motorcycle came in a rash and negligent manner in the opposite direction and dashed against the claimant, as a result of which, the claimant sustained grievous injuries.

4. According to the claimant, the accident occurred only due to the rash and negligent riding of the first respondent. According to the claimant, he was running a medical store and earning a sum of



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Rs.20,000/- per month as income. Therefore, the claimant filed a claim petition for a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the motor accident.

5. The first respondent remained Exparte before the Tribunal.

6. The second respondent filed a counter denying all the averments in the claim petition and further disputed the negligence of the first respondent. The second respondent contended that the accident occurred only due to the rash and negligent driving of the claimant himself. The second respondent while denying the age, occupation, monthly income and the nature of injuries sustained by the claimant stated that the compensation claimed was exorbitant and therefore prayed for dismissal of the Claim Petition.

7. Before the Claims Tribunal, the claimant examined himself as PW1 and Exs.P1 to P10 were marked. The second respondent on the other hand examined R.W.1, Medical Record Officer in Government Dharmapuri Medical College Hospital, RW2 the Assistant in Medical Record Department of Ganga Medical Centre and Hospital, Coimbatore



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and R.W.3 Maran, working in the second respondent and further marked

Exs.R1 and R2 .

8. The Claims Tribunal, on the basis of both oral and documentary evidence on record returned a finding of negligence against the first respondent. The Claims Tribunal on an assessment of the entire evidence on record awarded a sum of Rs.8,19,000/- as compensation along with interest at the rate of 7.5% p.a. to the claimant for the injuries sustained by her in the accident. Aggrieved by the award of the Tribunal, the above appeal has been filed by the insurance company.

9. The learned counsel for the second respondent submitted that the finding of the Tribunal on negligence was erroneous. The Tribunal failed to consider that in Ex.R.2, the Accident register the nature of accident was clearly stated as “skidded and fell down” from the two wheeler. The learned counsel therefore submitted that as the claimant skidded and fell down there was no negligence on the part of the first respondent and therefore the second respondent was not liable to pay compensation.



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10. The learned counsel further submitted that absolutely no evidence was filed by the claimant to establish that he sustained functional disability, that the Tribunal erred in fixing the disability at 35% and in the absence of any proof of the claimant's job and income, the Tribunal ought not to have awarded as Rs.8,19,000/- as compensation, which sum is highly excessive.

11. The learned counsel for the claimant on the other hand submitted that the award passed by the Tribunal was just, fair and reasonable and did not call for any interference in the appeal. The learned counsel for the claimant submitted that considering the avocation and the nature of injuries suffered by the claimant, the Tribunal rightly assessed the disability at 35%. Due to fracture in his right hand, the claimant could not write and handle the medicines and therefore he suffered permanent disability.

12. I have heard both the learned counsels and I have also perused the materials available on record .



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13. It is the case of the second respondent that the accident was reported as “ skid and fall” from two wheeler in the Accident Register copy and therefore it cannot be held that the first respondent was negligent. The FIR was registered by the first respondent against the claimant. The involvement of the first respondent's vehicle is not disputed. In the FIR, it was recorded that the claimant's negligence resulted in this accident. It is settled law that the FIR cannot be taken as gospel truth. The first respondent, who is the author of the FIR has not come before the Court and deposed the facts stated therein. If really the accident did not happen due to the fault of the first respondent, he could have appeared and spoken on the nature of the accident. The Tribunal has therefore rightly held that mere filing of the FIR against the claimant will not lead to inference of negligence against the claimant, moreso, when the same was authored by the first respondent himself. The Tribunal rightly held that the first respondent did not appear and tender evidence disputing the claimant's version and therefore there was no justification for rejecting the claimant's case on negligence. I am of the view that the finding of the Tribunal is reasonable on the facts of the case and hence the same is confirmed.



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14. As per Ex.P.2 – the discharge summary, the claimant suffered the following injuries:-

“Crush injury right hand with closed fracture right distal radius with wrist subluxation with closed fracture MPX and metacarpal of middle finger, closed fracture of 5th metacarpal with open comminuted fracture of MOX of Index finger with bone loss with segmental loss of ulnar neurovascular bundle with facial lacerations”.

The claimant was treated for the above injuries in Ganga Medical Centre and Hospital from 06.06.2016 to 13.06.2016.

15. It is seen that the Medical Board vide Ex.X.1 Disability Certificate assessed the disability at 35% Partial Permanent disability. In the said Disability certificate, it was stated that “pain, swelling and deformity of right distal radius. There is stiffness of index, middle and ring finger in the right hand. Further he has poor hand grip and not able to lift weight using right hand. Mal-union of right distal radius”. The



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Tribunal adopted 35% disability assessed by the Medical Board as functional disability and awarded compensation for disability by applying the multiplier method.

16. In my view, the Tribunal ought not to have adopted percentage of disability as “functional disability”. As per Ex.P.8 – Disability certificate, the disability sustained by the claimant was partial permanent disability. Therefore, considering the nature of the injuries and the impact of the same on the claimant's earning capacity, I am of the view that the functional disability can be assessed at 30% and the award of the Tribunal under the head of disability is modified as follows:-

$$\text{“Rs.7,500 x 12 x 16 x 30/100 = Rs.4,32,000/- “}$$

17. In respect of other heads, the award of the Tribunal in my view is reasonable. Therefore, the award of the Tribunal in so far as the compensation towards disability is concerned, is reduced from Rs.5,04,000/- to Rs.4,32,000/- . The Award of the Tribunal is hence modified as follows:-



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Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Compensation for disability	5,04,000/-	4,32,000/-	Reduced
2	Pain and suffering	25,000/-	25,000/-	Confirmed
2	Extra nourishment expenses	20,000/-	20,000/-	Confirmed
3	Attender Charges	10,000/-	10,000/-	Confirmed
4	Loss of amenities	25,000/-	25,000/-	Confirmed
5	Medical expenses	2,25,000/-	2,25,000/-	Confirmed
6	Transport expenses	10,000/-	10,000/-	Confirmed
Total		Rs.8,19,000/-	Rs.7,47,000/-	Reduced by Rs.72,000/-

18. It is submitted by the learned counsel for the second respondent that 50% of the award amount has already been deposited before the Tribunal.

19. In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed.
- ii) The second respondent is directed to deposit the balance award amount along with interest at the rate of 7.5% per annum from the date of claim petition till deposit before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.



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(iii)On such deposit, the claimant is permitted to withdraw the same together with interest thereon and costs, less the amount if any, already withdrawn, by filing suitable application before the Tribunal. Consequently connected miscellaneous petition is closed. No costs.

10.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

The Motor Accidents Claims Tribunal,
(Special District Court) Dharmapuri.



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N.MALA,J.

kkd

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