



C.M.A.No.2231 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 09.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.2231 of 2022

and

CMP.No.17242 of 2022

M/s.National Insurance Co. Ltd.,
No.46, Moore Street,
Chennai

...Appellant

Vs.

1.Krishnan
2.Syed Abdul Kadar

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree passed in M.C.O.P.No.6607 of 2017 dated 15.02.2022 on the file of Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.S.Arun Kumar

For R-1 : Mr. Amar Dineshbhai Pandiya

For R-2 : Service awaited



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JUDGMENT

WEB COPY This appeal is filed challenging the Award and Decree passed in M.C.O.P.No.6607 of 2017 dated 15.02.2022 on the file of Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai.

2. The Insurance Company has filed the above appeal challenging the quantum of compensation awarded by the Claims Tribunal.

3. For convenience, the rank of the parties is shown as per their rank before the Tribunal.

4. On 27.06.2017, while the claimant was riding his two wheeler bearing Reg.No. TN-03-R-9110, a motor cycle bearing Reg.No.TN-03-U-1005 driven by its driver in a rash and negligent manner, came in the opposite direction and dashed against the claimant's two wheeler, causing him grievous injuries.

5. According to the claimant, the accident occurred only due to the rash and negligent driving of the offending vehicle. The claimant was



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aged about 35 years at the time of the accident and as a shop owner in Burma bazaar, Chennai earning Rs.20,000/- as income. According to the claimant, due to the accident, he was not able to do his business as before. The claimant therefore filed claim petition seeking Rs.20,00,000/- as compensation for the injuries sustained by him in the accident.

6. The first respondent remained ex-parte and the second respondent/ Insurance company contested the claim petition.

7. The second respondent/Insurance company filed detail counter denying the negligence, liability and quantum of compensation awarded by the Tribunal.

8. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.8 in support of his case. On the side of the respondent, no evidence either oral or documentary was adduced. The disability certificate issued by the Regional Medical Board, Government Stanley Medical College Hospital, Chennai was marked as Ex.C.1.



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9. The Claims Tribunal, on an assessment of the entire evidence on record rendered a finding of negligence against the rider of the first respondent, assessed the compensation at Rs.6,60,040/- along with 7.5 % interest and mulcted the liability on the second respondent/Insurance company.

10. Aggrieved by the award of the Claims Tribunal, the appellant/Insurance Company has filed the above appeal challenging the quantum of compensation.

11. The learned counsel for the appellant submitted that the Claims Tribunal had erred in adopting the multiplier method as there was no functional disability as such. The learned counsel further submitted that, in the absence of any evidence to establish that the injury resulted in loss of earning of the claimant, it could not be said that the claimant suffered functional disability. The learned counsel therefore submitted that it is a fit case for adopting unit method and not multiplier method.

12. The learned counsel for the first respondent on the other hand,



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submitted that the award of the Claims Tribunal was just, fair and reasonable and did not call for any interference by this Court.

13. I have heard both the learned counsels and have perused the materials placed on record.

14. The only point to be considered in this appeal is as to whether the adoption of multiplier method by the Claims Tribunal, for assessing the loss due to the disability, is sustainable or not.

15. It is seen from the claim petition that the deceased was doing business by running a shop in Burma bazaar, Chennai. It is seen that the claimant suffered fracture in both bones of the right leg and a surgery was conducted on 28.06.2017 and he was hospitalised for 4 days. *viz* from 28.06.2017 to 01.07.2017. The Medical Board in Ex.C.1 assessed his permanent disability at 15%.

16. As rightly pointed by the learned counsel for the appellant, in the absence of any finding on functional disability, the Claims Tribunal ought not to have adopted the multiplier method. Admittedly, the



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appellant is a shop owner doing business and therefore in the absence of any evidence to show that due to the injuries, his business was affected, the multiplier method cannot be adopted.

17. I am therefore of the view that the Claims Tribunal erred in adopting multiplier method and therefore unit method is adopted. The amount for one percentage of disability is fixed at Rs.4,000/- and hence the award under the head 'disability' is arrived at Rs.60,000/- ($4,000 \times 15/100 = 60,000/-$). The award towards other heads in my view are meagre and hence modified. The award towards Loss of amenities and Mental Agony is set-aside.

18. As far as income of the claimant is concerned, the Tribunal fixed the notional income at Rs.10,000/- per month. In my view the notional income fixed by the Tribunal is very low. Considering that the claimant was doing business in Burma Bazaar, Chennai. I am of the view that the notional income of Rs.12,000/- per month would be fair and reasonable. Therefore, loss of income for 6 months is assessed at Rs.72,000/- ($\text{Rs.12,000} \times 6 = 72,000/-$).



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19. In the light of the above discussion, the award of the Tribunal is modified as follows.

S.No.	Various Heads	Award by Tribunal (amount in Rs.)	Award by this Court (amount in Rs.)
1.	Disability	4,03,200/-	60,000/-
2.	Medical Expenses	1,77,840/-	1,77,200/-
3.	Loss of Income	10,000/-	72,000/-
4.	Pain and Suffering	15,000/-	25,000/-
5.	Transportation Expenses	10,000/-	25,000/-
6.	Nutrition Expenses	15,000/-	20,000/-
7.	Damages to Clothes	2,000/-	1,000/-
8.	Attender Charges	2,000/-	10,000/-
9.	Loss of Amenities	15,000/-	Nil
10.	Mental Agony	10,000/-	Nil
Total		6,60,040/-	3,90,200/-

The claimant is therefore entitled to Rs.3,90,400/- as compensation along with 7.5% interest.

20. There shall be a direction to the Insurance Company to deposit the compensation fixed by this Court at Rs.3,90,200/- along with 7.5% interest within a period of six (6) weeks from the date of receipt of copy of this Judgment, less amount, if any, already deposited. On such deposit being made, the claimant shall withdraw the same.



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In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The IV Judge
Motor Accidents Claims Tribunal,
Small Causes Court,
Chennai.

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



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N.MALA.,J.

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