



C.M.A.No.4396 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 4396 of 2019

United India Insurance Co.Ltd.,
No.6, Railway Road,
Soolur.

.. Appellant

Versus

1. Masanam
2. Shanmugaiyah
3. Anthony Lurthusamy

4. United India Insurance Co.Ltd.,
No.139, Kumaran Road,
Tiruppur.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 02.01.2019 made in M.C.O.P.No.363 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur.

For Appellant	:	Mr. J. Chandran
For R1	:	Mr. Ma.P. Thangavel
For R2	:	No such addressee
For R3	:	Not Ready in Notice
For R4	:	No Appearance



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JUDGMENT

WEB COPY The appellant/Insurance Company has come forward with this appeal questioning the judgment and decree dated 02.01.2019 passed in M.C.O.P. No. 363 of 2011 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur.

2. The claim petition in M.C.O.P. No. 363 of 2011 was filed by the first respondent in this appeal.

3. As per the claim petition, on 14.01.2011 at about 12.15 a.m., the claimant was riding his Car bearing Registration No.TN-39-AH-2277, when the car was nearing a place called Kadhapullapatti, in Dharapuram to Thiruppur Road, a car was proceeding in the opposite direction. According to the claimant, the car coming in the opposite direction had bright head lights and it had disturbed the view of the claimant. In that process, the claimant could not see the Crane bearing Registration No.TN-09-R-8230 parked in the road. The claimant dashed against the backside of the Crane and sustained grievous injuries. According to the claimant, he was aged 44 years at the time of accident and earning a sum of Rs.3,300/- per month by engaging himself in doing Banian Company works. As the injuries sustained by him resulted in



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permanent disability, he has filed a claim petition claiming a compensation of

Rs.8,00,000/- as compensation.

4. On notice, the third respondent in M.C.O.P. No. 363 of 2011 namely, United India Insurance Co.Ltd., the appellant herein, has filed a counter statement. According to the third respondent/appellant it was the claimant who drove the car negligently and hit against the Crane. Therefore, it was the claimant who was negligent in driving the Car. There was no other vehicle involved in the accident. Immediately after the accident, the claimant did not give any complaint. However, one Sivaraj a friend of the claimant has given a complaint by stating that an accident had occurred on 28.01.2011. On the other hand, the accident had actually occurred on 14.01.2011. By suppressing the date of accident a complaint was given as though the Crane was parked in the middle of the road and it led to the accident. In fact, the Investigating Officer conducted investigation in Crime No.717 of 2011 and filed the final report only against the claimant for the offence under Section 279 of IPC. The claimant, being the tort-feasor, is not entitled to any compensation payable by the Insurance Company. In any event, the accident took place due to the rash and negligent driving of the claimant himself who drove the car in a rash and negligent manner. There was no other vehicle



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involved in the accident. While so, the Insurance Company cannot be mulcted with the liability to pay compensation.

5. Before the Tribunal, on behalf of the claimant, the claimant himself examined as P.W.1, Dr. Sendhil Kumar was examined as P.W.2 and Exs.P1 to P9 were marked on behalf of the claimant. On behalf of the respondents, one Mr.Balraj was examined as R.W.1 and Exs.R1 to R6 were marked.

6. The Tribunal, on appreciation of the oral and documentary evidence held that there was an accident in which the car driven by the claimant had hit the backside of the Crane. The Tribunal also concluded that for the injuries sustained by the claimant in the accident, the Insurance Company is liable to pay the compensation to him. In order to lend support to this conclusion, the Tribunal placed reliance on the decision of the Hon'ble Rajasthan High Court in ***United India Insurance Co.Ltd., Vs. Smt.Rekha, AIR 2007(NOC) 1548 (Raj)*** and concluded that even where negligence is on the part of the victim himself still a petition filed under Section 163(A) of the Motor Vehicle is maintainable.



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7. As regards the quantum, the tribunal concluded that P.W.2-Doctor has assessed the disability at 47%. The tribunal awarded a sum of Rs.3,000/- per percentage of disability and awarded a sum of Rs.1,41,000/-. For transportation charges a sum of Rs.10,000/- was awarded. For extra nourishment Rs.25,000/- was awarded. For pain and suffering Rs.1,00,000/- was awarded. For mental agony, the tribunal awarded a sum of Rs.50,000/-. In all a total sum of Rs.4,37,702.23/- was awarded as compensation.

8. Assailing the award passed by the tribunal, the learned counsel for the appellant/Insurance Company contended that the injuries sustained by the claimant are not such that they would deprive his earning prospects. The learned counsel for the appellant invited the attention of this Court to the claim petition and submitted that in Column No.1, it was merely stated that the claimant suffered "grievous injuries". What was the injuries suffered him has not been indicated in the claim petition. Similarly, the period of treatment undergone by the claimant has not been proved. According to the counsel for the appellant, the injuries suffered by the appellant does not warrant compensation of Rs.1,00,000/- towards pain and suffering and it is excessive. Similarly, the tribunal erred in awarding a sum of Rs.50,000/- towards mental agony which is legally not sustainable. The learned counsel for the appellant



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has also invited the attention of this Court to the deposition of R.W.3 and stated that the claimant himself was prosecuted before the learned Judicial Magistrate, Tharapuram for the offence under Section 279 of IPC and ultimately, he paid a sum of Rs.500/- as fine. This would indicate that the claimant is the tort-feasor and he is not entitled for any compensation payable by the appellant/Insurance Company. Therefore, the learned counsel for the appellant prayed for setting aside the award passed by the tribunal.

9. Per Contra, the learned counsel for the first respondent/claimant submitted that before the tribunal, P.W.2/Doctor was examined who assessed the disability at 47%. The claimant also filed medical bills under Ex.P5 to the tune of Rs.1,10,382.23/- which would indicate the nature and gravity of injuries suffered by him. That apart the claimant also marked Ex.P3-wound certificate. Ex.P6 is another wound certificate issued in favour of the claimant. Ex.P7 is the X-ray. The tribunal after analysing the entire material evidence has passed a reasonable amount as compensation. The learned counsel for the first respondent also submitted that the tribunal based on the material records has stated that the claimant suffered injuries on his right leg in his femur bone and there is a fracture injury in the right thigh. During the course of treatment, metal rods were implanted in the legs. Even though the claimant



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suffered various other injuries, the Doctor has assessed the disability only at 47%. Taking note of the above, the tribunal awarded a reasonable sum of compensation which is inconsonance with the injuries suffered by him. Accordingly, the learned counsel prayed for dismissal of this appeal.

10. Heard both sides and perused the materials placed on record.

11. It is an admitted fact that the claimant suffered grievous injuries in an accident while driving his own car. The Insurance Company is not disputing the liability to pay the compensation. However, what is disputed is that the compensation awarded by the tribunal is excessive.

12. This Court has gone through the award passed by the Tribunal. PW2 Doctor assessed the disability suffered by the claimant at 47%. For 47% disability suffered by the claimant, the Tribunal awarded a sum of Rs.3,000/- per percentage of disability. This in the opinion of this Court is a just and fair compensation. Similarity, based on the hospital bills produced by the claimant to show the quantum of medical expenses incurred at Rs.1,10,382.23/-, it was allowed by the Tribunal at actuals.



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13. At the same time, the tribunal awarded a sum of Rs.1,00,000/- towards pain and suffering, which in the opinion of this Court is excessive.

Considering the fact that the claimant had suffered fracture in his right leg, he had underwent surgery and metal plates were inserted in his right leg, this Court can perceive that the pain and sufferings undergone by the claimant would be enormous for which he has to be compensated. Having regard to the above, this Court hereby reduces the sum of Rs.1,00,000/- awarded by the tribunal and instead a sum of Rs.75,000/- is awarded.

14. The tribunal awarded a sum of Rs.50,000/- towards mental agony. Awarding compensation under the head mental agony is legally not sustainable in a case of this nature especially when already compensation was paid for permanent disability, pain and sufferings, transportation and extra nourishment. Therefore, the award of Rs.50,000/- towards mental agony cannot be accepted. Accordingly, the amount of Rs.50,000/- towards mental agony is hereby set aside. In all other aspects, the award of the Tribunal is reasonable and therefore, they are confirmed.

15. Accordingly, the award of the Tribunal is modified as follows:



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S.N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	1,41,000/-	1,41,000/-	Confirmed
2.	Inpatient	660/-	660/-	Confirmed
3.	Attendant charges	660/-	660/-	Confirmed
4.	Medical expenses	1,10,382.23/-	1,10,382.23/-	Confirmed
5.	Nutrition	25,000/-	25,000/-	Confirmed
6.	Transportation	10,000/-	10,000/-	Confirmed
7.	Pain & Sufferings	1,00,000/-	75,000/-	Reduced
8.	Mental agony	50,000/-	----	Reduced
	Total	4,37,702.23/- Rounded off to Rs.4,38,000/-	3,62,702.23/- Rounded off to Rs.3,63,000/-	Reduced by 75,000/-

16. In the light of the above discussions, the award of the Tribunal is modified and the compensation is fixed at Rs.3,63,000/- as against the compensation awarded by the Tribunal at Rs.4,38,000/-. The first respondent/claimant is entitled to Rs.3,63,000/- along with 7.5% as interest per annum. The appellant insurance company is directed to pay the reduced compensation amount within a period of six weeks from the date of receipt of copy of this order, after deducting the amount, if any, already deposited. The



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first respondent/ claimant shall be entitled to withdraw the above said amount
by making proper application before the Tribunal.

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tiruppur.

2.The Section Officer,
VR Section,
Madras High Court.



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A.A.NAKKIRAN, J.

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