



C.M.A. No. 355 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 355 of 2021
and C.M.P. No.2394 of 2021

M/s. Iffco Tokio General Insurance
Company Limited,
ITGI-STRATIGIC, Business Unit,
New No.28, 2nd Floor,
North Usman Road,
T. Nagar, Chennai.

... Appellant / 2nd Respondent

Vs.

1. N. Murugan

... 1st Respondent / Petitioner

2. D. Vadivel

... 2nd Respondent / 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 18.12.2019 passed in M.C.O.P. No. 645 of 2010 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr. M. B. Gopalan

For R1 : Mr. M.A. Gowthaman



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For R2 : No Appearance

JUDGMENT

This Civil Miscellaneous appeal has been filed by the insurance company challenging the Judgment and Decree passed in M.C.O.P. No. 645 of 2010, dated 18.12.2019 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 21.10.2010, the claimant along with two other persons namely Naveen and Philipraj @ Chinna Philipraj, were travelling in the Tourist Maxi Cab bearing Registration No.TN-24-U-1125 from Maruvathur to Krishnagiri Road, near Thulikottai Village, at about 4:45 PM, the driver of the Tourist Maxi Cab lost his control due to his rash and negligent driving and hit on the tractor bearing Registration No. TN-29-AA-1328 which came in the opposite direction and thereby causing severe injuries to various passengers, who travelled in the



said Tourist Maxi Cab. A criminal case was also registered in Cr.No.21/2010 under section 279, 337 of I.P.C. on the file of the Kandhikuppam Police Station. Due to injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest.

4. The first respondent, who is the owner of the Tourist Maxi cab has not contested the claim and remained ex-parte. The second respondent-insurance company, who is the appellant herein has filed a counter and contended that the accident was not happened due to the negligence on the part of the Tourist Maxi Cab driver and also stated that there were excessive passengers travelled in the said cab, which is a violation of policy condition. The insurance company also contended that the injuries sustained by the claimants are simple injuries but the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, three claim petitions have been jointly taken up for enquiry and common evidence was also recorded. On behalf of the claimant, P.W.1 to P.W.3 were examined and Exs.P.1 to P.6 were



marked, on the side of the respondent no witnesses were examined and no exhibits were marked and the disability report assessed by the Medical Board is marked as Ex.C.1.

6. Based on the evidence placed on record, the Tribunal in point Nos.1 and 2, has held that the rash and negligent driving of the driver of the Tourist Maxi Cab bearing Registration No.TN-24-U-1125 is responsible for the accident and both first and second respondents are jointly liable to pay the compensation. In point No.3, the Tribunal has quantified and granted a compensation for a sum of Rs.2,32,000/- along with interest @ 8% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the quantum of awarded by the Tribunal, this appeal has been filed by the insurance company seeking reduction of the compensation awarded.

8. The learned counsel appearing for the insurance company has submitted that the claimant named Murugan has only suffered simple injury and undergone only conservative treatment and the medical board has



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assessed the disability of the claimant as 20%, hence the Tribunal has adopted the percentage method and awarded compensation of Rs.3,000 per percentage of disability. However, the Tribunal has granted a sum of Rs.1,50,000/- under the head pain and suffering, which is exorbitant and the same is required to be modified. The learned counsel also contended that the award granted under various other heads is also on the higher side and the interest of 8% awarded is not just, hence prays to modify the same.

9. Per contra, the learned counsel appearing for the claimant has submitted that the claimant has been properly assessed for his disability by the medical board and based on disability, the Tribunal has awarded a just and proper compensation under various head, hence, prays to confirm the same.

10. Heard the submission made on both sides and perused the materials available on record:

11. Hon'ble Apex Court while interpreting the term 'Just Compensation' incorporated in Section 166 of the Motor Vehicles Act, 1988,



has held in umpteen number of judgments, that the compensation awarded

shall not be a bonanza, largesse or source of profit. Recently, in **Anjali and**

Ors. Vs. Lokendra Rathod and Ors. [2023 (1) TNMAC 1 : 2023 ACJ 637]

has illustrated 'just and fair' compensation in paragraph 10, which reads as follows:

“10. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. MANU/SC/0606/2009 : (2009) 6 SCC 121, this Court has laid down as under:

16...."Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.”

12. In this case, on perusal of the Ex.P.2 - wound certificate, which was the first document came into existence records two injuries sustained by the claimant. The first injury is a lacerated wound and the second is the pain



in the chest area of the claimant. The claimant was also examined by taking x-ray and on assessing the same, the opinion of the Surgeon was also obtained which states that no adverse injuries were noted and the injuries are only simple injuries. However, the claimant has come forward to undergo medical assessment in the medical board and the medical board after considering the injuries sustained by the claimant has fixed the disability as 20% and also given the reason that due to the injuries sustained by the claimant, he is having a continuous headache, pain in his left shoulder and facing difficulty and restricted movement of his body parts. Hence, the Tribunal has accepted the disability assessed by the medical board and by adopting percentage method, granted Rs.3,000/- per percentage of disability and awarded Rs.60,000/- as compensation under the head disability.

13. The Tribunal has awarded a major compensation of Rs.1,50,000/- under the head pain and suffering for which the Tribunal has not given any reason for quantifying and fixing such a huge amount under the said head. In the absence of any clarity regarding injuries and the treatment undergone by him, granting compensation for a huge sum under the head pain and suffering requires proper reasoning by the Tribunal, hence



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this Court is of the view that by considering the nature of the injury sustained by the claimant at the time of accident and by the assessment of the Surgeon stating that the injuries sustained by the claimant are only minor and simple injuries, however, considering the complications on the left shoulder of the claimant and by the disability assessment report of the medical board, a sum of Rs.25,000/- under the head pain and suffering would be proper. Hence, the award for a sum of Rs.1,50,000/- by the Tribunal under the head pain and suffering is hereby modified to Rs.25,000/- as discussed above.

14. The Tribunal has also granted Rs.5,000/- compensation under the each of the head transport expenses, damage to clothes, extra nourishment and attender charges. Admittedly, in this case, the claimant has not undergone any in-patient treatment in any hospital and without proper evidence, the Tribunal has granted Rs.5,000/- as attender charges, which is not necessary and similarly, the Tribunal has also granted Rs.5,000/- each towards transport expenses and damage to clothes and articles, which are also exorbitant, hence, this Court is of the view that the compensation granted by the Tribunal under the head attender charges is rejected and the



transportation expenses and damage to clothes and articles are also modified to Rs.2,000/- under each head.

15. The next contention raised by the learned counsel appearing for the insurance company is that the award of interest @ 8% per annum by the Tribunal is high and the same has to be fixed as 7.5% per annum. This Court follows the norms of fixing the interest @ 7.5% per annum, hence the interest awarded by the Tribunal is modified to 7.5% per annum.

16. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability Compensation	60,000/-	60,000/-	Confirmed
2.	Transportation expenses	5,000/-	2,000/-	Reduced
3.	Damages to clothes and articles	5,000/-	2,000/-	Reduced
4.	Attender charges	5,000/-	---	Rejected
5.	Extra Nourishment	5,000/-	5,000/-	Confirmed
6.	Loss of income	2,000/-	2,000/-	Confirmed
7.	Pain and Suffering	1,50,000/-	25,000/-	Reduced
	Total Compensation	2,32,000/-	96,000/-	Reduced



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17. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,32,000/- is hereby reduced to **Rs.96,000/- [Rupees Ninety Six Thousand only]** along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit, excluding the default period, if any. At the time of admission of this appeal, in C.M.P. No.2394 of 2021 in C.M.A. No.355 of 2021 dated 17.02.2021, this Court directed the insurance company to deposit 50% of the award amount quantified by the Tribunal with accrued interest and cost to the credit to M.C.O.P. No.645 of 2010 on the file of the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Krishnagiri. Since, the award amount is now reduced to Rs.96,000/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit, excluding the default period, if any, after satisfying the award amount to the claimants, the appellant - insurance company is directed to withdraw the remaining amount, if any with accrued interest thereon by making appropriate application before the Tribunal. The Tribunal shall withdraw the amount now awarded by this Court along with interest from the credit of C.M.A. No.355 of 2021 before the Indian Bank, High Court Branch,



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Chennai and disburse the same by directly giving credit to the Savings Bank Account of the claimant. There shall be no order as to costs in the present appeal.

01.11.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R. Section,
High Court, Chennai.

K. RAJASEKAR, J.

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