



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.Nos.2761 of 2021 and 1852 of 2023
and
C.M.P.No.17932 of 2023

CMA.No.2761 of 2021:

Gowrishankar

...Appellant

Vs.

1.Senthil Rasu

2.R.Sundaramoorthy

3.United India Insurance Company Limited,
Cuddalore, represented by its Branch Manager,
Having their office at No.13-A, SBI Complex,
Nethaji Road, Manjakuppam Village,
Cuddalore.

...Respondents

CMA.No.1852 of 2023:

United India Insurance Company Limited,
Cuddalore, represented by its Branch Manager,
Having their office at No.13-A, SBI Complex,
Nethaji Road, Manjakuppam Village,
Cuddalore.

...Appellant



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C.M.A.Nos.2761 of 2021 and 1852 of 2



Vs.

1.Gowrishankar

2.Senthil Rasu

3.R.Sundaramoorthy

..Respondents

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 30.11.2020 made in MCOP.No.109 of 2018, on the file of the Motor Accident Claims Tribunal, (Sub Court), Karaikal.

For Appellant : Mr.K.Varadha Kamaraj
for appellant in CMA.No.2761/2021 and
for R1 in CMA.No.1852/2023

For Respondents : Mr.D.Baskaran
for R3 in CMA.No.2761/2021 and
for appellant in CMA.No.1852/2023

R1 in CMA.No.2761/2021 and
R2 in CMA.No.1852/2023 – No appearance

R2 in CMA.No.2761/2021 and
R3 in CMA.No.1852/2023 – No such person



COMMON JUDGMENT

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(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

While CMA.No.2761 of 2021 is by the claimant, CMA.No.1852 of 2023 is by the Insurance Company.

2. Challenge in both the appeals is to the quantum of compensation awarded by the Motor Accident Claims Tribunal, Sub-Court, Karaikal at Rs.35,45,859/- for the injuries suffered by the claimant in the motor accident that occurred at 9.00 a.m on 15.02.2017.

3. According to the claimant, when he was riding the motorcycle bearing Reg.No.TN-45-BA-3927 on the Thirunallaru main road, near Thirunallaru bus stop, the driver of the Tata Sumo (SUV) parked on the left side of the road suddenly opened the door without any warning and the door hit the claimant. As a result of the impact, the claimant swerved to right and fell on the car coming in the opposite direction. As a result of the accident, the claimant suffered grievous injuries including fracture in C6 bone of the vertebral column, among other facial injuries. Contending that the fracture



in the C6 bone of the vertebra had resulted in paralysis of the left upper limb, the claimant had suffered 100% disability and on that count the claimant sought for a compensation of Rs.50,00,000/-. The quantum was supported by the fact that the claimant was a final year Engineering student and he has lost his job opportunities and marital prospects and also the amenities in life.

4. The claim was resisted by the Insurance Company contending that the claimant himself being the rider of the two wheeler has also contributed to the accident by his rash and negligent driving. He could have averted the accident had he been careful. It was also claimed that the owner and the insurer of the Maruti Alto car which was also involved in the accident are also a necessary parties to the claim petition.

5. At trial, before the Tribunal the claimant was examined as PW1 and Exs.P1 to P14 were marked. There was no evidence let in on the side of the Insurance Company. Disability certificate issued by the Medical Board of the Government General Hospital, Karaikal was marked as Ex.X1.



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6. Going by the FIR which was lodged at about 9.45 a.m for the accident that occurred at 9.00 a.m by the pillion rider and by the evidence of PW1, the Tribunal concluded that the opening of the door by the driver of the Tata Sumo car bearing Reg.No.TN-31-BB-3391 was the sole cause of the accident and as such, the Insurance Company would be liable to compensate the injured claimant. The said conclusion of the Tribunal is also supported by the fact that the Insurance Company did not let in any evidence.

7. On the quantum, the Tribunal, based on the disability certificate issued by the Medical Board of the Karaikal Government General Hospital concluded that 65% would be the functional disability. It took the monthly income at Rs.15,000/-, added 40% towards future prospects and applied the multiplier of '18', considering the age of the claimant at the time of the accident and arrived at a sum of Rs.29,48,800/- towards loss of earning capacity. The Tribunal also added the following amounts towards compensation under various heads:



S.No.	Under the head	calculation
1.	Loss of comfort and basic amenities	Rs.1,00,000/-
2.	Pain and Sufferings	Rs. 50,000/-
3.	Medical Expenses	Rs.2,41,786/-
4.	Rich and nutritious food	Rs. 50,000/-
5.	Attended charges	Rs. 50,000/-
6.	Transport Expenses	Rs.1,05,673/-

Thus, the total compensation was arrived at Rs.35,45,859/-.

8. Mr.D.Baskaran, learned counsel appearing for the appellant in CMA.No.1852 of 2023/ Insurance Company would contend that the Tribunal must have at least apportioned certain amount of negligence on the rider of the two wheeler. Relying upon the manner in which the accident had occurred, the learned counsel would submit that, if only the rider of the two wheeler was a little more cautious, the accident could have been averted. The learned counsel would also submit that the non-impleading of the owner of the Alto car which was coming in the opposite direction is also fatal to the claim. On the quantum, the learned counsel would submit that the nature of injuries suffered does not justify the assumed disability at



65%. The learned counsel would submit that, though there is a disability, it may not lead to 65% disability in the earning capacity. Since, it has only affected the functioning of the left upper limb.

9. Contending contra, Mr.K.Varadhakamaraj, learned counsel appearing for the claimant would submit that having not let in any evidence, the Insurance Company cannot be allowed to argue on the contributory negligence. He would also draw us to the cross-examination of PW1 by the learned counsel for the Insurance Company and point out that there is no suggestion that the driver of the Tata Sumo car did not open the door. Except the suggestion that the accident could have been averted if the rider of the two wheeler had been cautious, there is nothing in the cross-examination to dis-credit the evidence of PW1 on the manner in which the accident had taken place. He would also point out that the FIR has been lodged immediately by the pillion rider and the evidence of the claimant and the contents of the FIR being the same, the Tribunal cannot be faulted for having fixed the entire negligence on the driver of the Tata Sumo car. On the quantum, Mr.K.Varadhakamaraj, learned counsel would submit that the



Tribunal ought to have taken the monthly income at a much higher amount considering the date of the accident. He would also submit that the Tribunal ought to have granted some compensation towards loss of marital prospects.

10. We have considered the rival submissions.

11. On the question of negligence, we find that the Tribunal cannot be said to be wrong. As evidence of the accident we have FIR, which is filed almost immediately after the accident. We have evidence of PW1 and the accident Register Ex.P9 and Accident Inspection Report Ex.P8. A perusal of all these documents, particularly, the damages suffered by the Tata Sumo car bearing Reg.No.TN-31-BB-3391, as revealed by the Accident inspection report, would conclusively prove that it was the act of the driver of the car in opening the door that resulted in the accident.

12. The claimant as PW1 has narrated the manner in which the accident had taken place, wherein, he had stated that due to the act of the driver in opening the door suddenly, the door hit him and he along with the



vehicle fell, on the right side, on the car that was coming in the opposite direction. This version has not been controverted in any manner. Therefore, we cannot come to any other conclusion than what has been reached by the Tribunal.

13. We have been repeatedly pointing out that if the Insurance Company wants to raise the defence of contributory negligence, which is a question of fact, which has to be established as any other fact, the Insurance company has to lead evidence. In the absence of any evidence on its side and in the absence of cross-examination of PW1, the injured claimant on the manner in which the accident took place, we do not think, we can entertain the argument on negligence on behalf of the Insurance Company.

14. Adverting to the quantum, we find from the medical report that the claimant has suffered paralysis of the left upper limb and the left upper limb has been rendered completely useless, apart from facial fracture. Considering the avocation and qualification of the claimant, we do not think facial fractures would be a deterrent or a facial fracture would lead to



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diminution in his earning capacity. The fracture of the C6 bone in spinal cord had rendered the left upper limb completely paralysed and useless.

The Medical Board has assessed the disability for the upper limb monoplegia, a condition, which leads to paralysis of the limb at 65%.

15. Though Mr.D.Baskaran, learned counsel appearing for the Insurance Company would make a valiant attempt to reduce the said percentage, we are unable to countenance the contention of the learned counsel. In case of injury which results in paralysis of limb, particularly to a person aged 21 or 22 years or persons in their teens, we cannot assess the damages based on mathematical precision or we cannot confine the damages to the quantum of disability and the quantum of earning capacity alone. We will have to necessarily take into account the sufferings that has to be endured by the individual for rest of his / her life. If that factor is fathomed in computing compensation, we will have to necessarily conclude that the quantifications of disability has to be based on certain assumptions.



16. There may be cases where such non-functioning of the left upper limb may not even result in any diminution of the earning capacity, depending upon the avocation of the injured. But, that by itself would not mean that the injured should not be compensated at all. Working out the disability and going by assumptions that the disability will have the effect on the earning capacity is only a method to compute the compensation.

17. We are therefore of the opinion that the fixation of functional disability at 65% as suggested by the medical Board cannot be faulted. Being a spinal cord injury, several other problems may crop up in future. Therefore, we cannot go by mathematical precision as suggested by the learned counsel for the Insurance Company.

18. Adverting to the contention of Mr.K.Varadhakamaraj, learned counsel for the claimant that no amount has been awarded towards loss of marital prospects, we are of the considered opinion that the compensation granted under the head of loss of future income, which, is on an assumption would cover the said head also. Particularly, in this case where there is a



disability that the injury may not have an effect on the earning capacity also.

Hence, we do not see any reason to interfere with the award.

19. Both the appeals are therefore **dismissed** and the award of the Motor Accident Claims Tribunal, Sub Court, Karaikal in MCOP.No.109 of 2018 will stand confirmed. The Insurance company is directed to deposit the award amount, less, if any, amount already deposited within a period of twelve (12) weeks from the date of receipt of the copy of this judgment. On such deposit, the claimant is permitted to withdraw the same. We make no order as to costs in these appeals. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
01.12.2023

dsa
Index :No
Internet :Yes
Neutral Citation :No
Speaking order



To

The Motor Accident Claims Tribunal,
Sub-Court, Karaikal.

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R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

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C.M.A.Nos.2761 of 2021 and 1852 of 2023

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