



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1442 of 2023
and C.M.P.No.14403 of 2023

The Divisional Manager,
The National Insurance Co. Ltd.,
3rd party hub, Annasalai Vellore.

... Appellant

Vs.

1.Sekar
2.S.Gunsekar

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.03.2023 in MCOP.No.185 of 2021 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirupattur.

For Appellant : Mr.C.Paranthaman

For Respondents : Mr.J.Daniel for R1
No appearance for R2

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the Insurance Company challenging the finding with regard to the negligence and the quantum of



compensation awarded by the Tribunal in its judgment and decree dated 31.03.2023 in MCOP.No.185 of 2021 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirupattur.

2. The first respondent is the claimant in MCOP.No.185 of 2021 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Tirupattur. He filed the claim petition claiming a sum of Rs.20,00,000/- as compensation for the grievous injuries sustained by the appellant in the accident that took place on 06.12.2020.

3. According to the first respondent, on 06.12.2020 at about 6.00 P.M., while he was riding his two wheeler, the car insured with the appellant came in the opposite direction in a rash and negligent manner and dashed against the two wheeler of the first respondent, as a result of which the first respondent was thrown out of the vehicle and sustained head injury and suffered fracture in his right leg and therefore, he was entitled to the compensation.

4. The second respondent, the owner of the offending vehicle, remained *ex-parte* before the Tribunal.



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5. The appellant/Insurance Company resisted the claim petition stating that the accident took place only due to the rash and negligent riding of the first respondent, since he attempted to over take the car and hit against the right side of the vehicle insured with the appellant and hence, the appellant is not liable to pay the compensation and that in any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined P.W.1 and P.W.2 and marked twenty six documents as Exs.P1 to P26. On the side of the appellant/Insurance Company one witness was examined as R.W.1 and six documents were marked as Ex.R1 and R6.

7. The Tribunal, after considering the pleadings, oral and documentary evidence held that the accident took place only due to the rash and negligent the act of the driver of the offending vehicle and directed the appellant being the insurer of the offending vehicle to pay a sum of Rs.15,70,380/- as compensation to the first respondent. Aggrieved over the said award, the appellant/Insurance Company has preferred the instant appeal.



8. The learned counsel for the appellant submitted that in the facts and circumstances of the case, considering the nature of injuries and the Disability Certificate issued by the Medical Board, the Tribunal ought not to have adopted multiplier method to award compensation; and that even assuming, the first respondent was entitled to compensation by multiplier method, the functional disability ought not to have been fixed at 60%; and that in any case the future prospects should not have been added while computing the compensation under the head “Disability”; that the first respondent did not have a valid insurance and hence, the first respondent is liable for contributory negligence and therefore prayed for reduction of the compensation amount.

9. Learned counsel for the appellant/Insurance Company submitted that the second respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the second respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to the second respondent is dispensed with.



10. Per contra, the learned counsel for the first respondent submitted that the compensation awarded by the Tribunal is just and reasonable and therefore, does not call for any interference. Further, the appellant had a valid insurance policy and a driving license as can be seen from Ex.R2 and EX.P.25. Hence, he prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant/Insurance Company as well as the learned counsel appearing for the first respondent and perused all the materials available on record before this Court.

12. Though the appellant had challenged the award of the Tribunal as regards the finding of negligence, the learned counsel for the appellant was unable to point out any error in the finding. It is seen from the records and finding of the Tribunal that though the FIR was lodged against the first respondent at the instance of the driver of the offending vehicle; the evidence of P.W.1 and P.W.2 shows that the accident had taken place only due to the negligence of the driver of the offending vehicle (car). The Rough Sketch Ex.P.26 prepared by the Investigating Officer during the investigation of the FIR also confirms that the driver of the car was on the wrong side of the road. Therefore, this Court is of the view that finding of



the Tribunal holding that the driver of the car to be guilty of negligence cannot be faulted and hence, the same is confirmed.

13. On perusal of records, it is seen that the first respondent had sustained head injury and suffered fracture in his Right Leg Compound Segment Fracture. The first respondent had also established the fact that he was working as a part time driver. Considering the nature of injuries and the Disability Certificate issued by the Doctor and the avocation of the appellant, this Court is of the view that the first respondent had suffered functional disability. The Tribunal had assessed the functional disability as 60% based on the Disability Certificate. The first respondent had also produced the discharge summary, marked as Ex.P2 to prove the nature of injuries suffered by him. Considering the above facts, this Court is of the view that the Tribunal was right in fixing the functional disability at 60% on the first respondent.

14. As regards the quantum of compensation, it is seen that the Tribunal had taken the notional income of Rs.8,000/- and by adding future prospects fixed the monthly notional income of the first respondent as Rs.10,400/-. In the said facts and circumstances of the case, considering the



year of accident and the avocation of the first respondent the income fixed by the Tribunal for computing compensation is just and reasonable. The award under the other heads are also just and reasonable. Therefore, this Court finds that there is no reason to interfere with the award passed by the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.15,70,380/- awarded by the Tribunal as compensation to the first respondent along with interest and costs is confirmed. It is submitted by the learned counsel for the appellant/Insurance Company that the 50% of the award amount has already been deposited at the time of admission. Therefore, the appellant/ Insurance Company is directed to deposit the balance 50% of the award amount along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw his respective share of the award amount, along with proportionate interest and costs, less the amount if any, already withdrawn. Consequently, connected Miscellaneous Petition is closed. No costs.



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Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No
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To

1.The Special Sub Judge,
Motor Accident Claims Tribunal,
Tirupattur.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.



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SUNDER MOHAN,J.

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