



C.M.A.No.30 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.30 of 2021

and

C.M.P.No.241 of 2021

The New India Assurance Co. Ltd.,
Sethukrishna Trade Centre, 2nd Floor,
N.133/31-A, Trichy Main Road,
Gugai, Salem – 636 006.

... Appellant

Vs.

1.M.Rajasekar
2.T.S.Kumarasamy

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 4th day of January 2020 made in M.C.O.P.No.1279 of 2016 on the file of Motor Accident Claims Tribunal (Special Sub Court No.2), Salem.

For Appellant : Mr.K.Vinod

For Respondents : Mr.C.Thangaraju [R1]
No appearance [R2]



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JUDGEMENT

The Insurance Company had filed the present appeal challenging the award passed by the Motor Accident Claims Tribunal (Special Sub Court No.2), Salem in M.C.O.P.No.1279 of 2016, dated 04.01.2020 on the grounds of liability and quantum of compensation.

2. As per the claim petition, on 17.02.2016 at about 9.00 p.m., when the claimant was riding his motor cycle viz., TVS Star city bearing Regn.No.TN-36-V-9514, he was hit by a pickup van bearing Regn.No.TN-34-J-0243 belonging to the first respondent and insured with the second respondent, which was driven by its driver in a rash and negligent manner. Due to the impact of the said accident, the claimant sustained grievous injuries all over his body. Therefore, the claimant filed a claim petition before the Tribunal claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the road accident.

3. Before the Tribunal, the claimant had examined two witnesses



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viz., P.W.1 and P.W.2 and marked 8 documents viz., Ex.P.1 to Ex.P.8.

On the side of the respondents, no witnesses were examined and marked two documents viz., Ex.R.1 and Ex.R.2. Ex.X.1 has been marked on the side of the witnesses. After adjudication, the Tribunal had partly allowed the petition and awarded a sum of Rs.15,08,675/- as compensation under various heads. Aggrieved by the said award, the Insurance Company has preferred the present appeal.

4. The learned counsel appearing for the appellant submitted that, though initially FIR was registered as against the offending vehicle, subsequently, the law enforcing agency conducted investigation and filed charge sheet stating that the first respondent driven his motorcycle under the influence of alcohol and dashed against the offending vehicle, thereby the accident had happened. However, without considering the same, the Tribunal has fastened the entire negligence as against the driver of the offending vehicle, which was insured with the appellant, which is wholly unsustainable. Further, the compensation awarded by the Tribunal under various heads are highly excessive and the same is liable to be interfered with. Accordingly, he prays for allowing the appeal.



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5. The learned counsel appearing for the first respondent submitted that, the compensation awarded under the other heads are just and reasonable, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. A perusal of the entire papers including the award passed by the Tribunal below would show that, it is stated in the AR copy that there is a smell of alcohol in the breath of the first respondent. Though such a statement has been recorded in the AR copy, the appellant has filed to prove the same by examining the doctor, who examined the first respondent. Further, this Court is of the view that mere smell of alcohol will not be a conclusive proof to hold that the first respondent had driven his motorcycle under the influence of alcohol. In this regard, without any medical examination or evidence by the appellant, it is cannot be held



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that the first respondent was under the influence of alcohol at the time of accident, which is contrary to Motor Vehicles Act, 1988. Hence, the Tribunal has arrived at a conclusion that the accident had happened due to the rash and negligent driving by the driver of the appellant's insured vehicle, which cannot be interfered with. Therefore, this Court confirms the finding with regard to negligence aspect rendered by the Tribunal.

8. Now, coming to the question of quantum of compensation awarded by the Tribunal, it is borne from the award reveals that the doctor assessed that the first respondent/claimant had suffered 50% permanent disability. By accepting the disability assessed by the doctor, the Tribunal had awarded a sum of Rs.1,50,000/- by erroneously fixing a sum of Rs.3,000/- per percentage of disability, even though, at the relevant point of time, per percentage of disability is Rs.5,000/-. Further, considering the fact that the percentage of disability vary from doctor to doctor, this Court is inclined to reduce the same and fixes the percentage of disability at 40%. Therefore, the amount under the head permanent disability stands enhanced to a sum of Rs.2,00,000/- ($40 \times \text{Rs.5,000/-} = \text{Rs.2,00,000/-}$).



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9. Further, the amount of compensation awarded by the Tribunal under the heads pain and suffering and extra nourishment are excessive and the same are reduced to a sum of Rs.50,000/- and Rs.25,000/- respectively.

10. Insofar as the compensation awarded under the head loss of amenities, no compensation can be awarded under such head as the said head is not conventional head, which attract any compensation. Therefore, the compensation awarded under the said head is accordingly set aside. Further, though the first respondent was employed as a teacher in a government aided school and earned a sum of Rs.30,000/- at the time of accident, however, the loss of income during the treatment period was not established before the Tribunal by examining the officials of the school. Hence, the first respondent is not entitled for any compensation towards loss of income during treatment period and accordingly, the same is set aside.

11. Further, this Court finds that the compensation awarded by the



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Tribunal under other heads viz., medical expenses, transportation, attender charges and damages to clothes are just and reasonable and are hereby confirmed.

12. In view of the above, the compensation awarded by the Tribunal is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Permanent Disability	1,50,000/-	2,00,000/- (enhanced)
2	Pain and suffering	75,000/-	50,000/- (reduced)
3	Loss of amenities	75,000/-	-
4	Medical expenses	9,02,675/-	9,02,675/-
5	Loss of income during treatment period	1,80,000/-	-
6	Transportation	25,000/-	25,000/-
7	Extra nourishment	75,000/-	25,000/- (reduced)
8	Attender charges	25,000/-	25,000/-
9	Damages to clothes	1,000/-	1,000/-
	Total	15,08,675/-	12,28,675/-

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the compensation amount by the Tribunal is reduced from



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Rs.15,08,675/- to Rs.12,28,675/- and the appellant/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.1279 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

19.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Motor Accident Claims Tribunal,
(Special Sub Court No.2),
Salem.



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



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M.DHANDAPANI, J.

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