



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.14 of 2022

United India Insurance Company Limited,
Door No.178, Dr.Najappa Road,
Gandhipuram,
Coimbatore 641 009.

...Appellant

Vs.

1.S.Senthilprabu
2.S.Rajan
3.R.Manimegalai

...Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2021 in M.C.O.P.No.2048 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Coimbatore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.R.Navaneethakrishnan for R1

No appearance for R2 & R3



J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the award dated 26.04.2021 made in M.C.O.P.No.2048 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Coimbatore.

2. The appellant/Insurance Company is the third respondent in M.C.O.P.No.2048 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Coimbatore. The first respondent filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 10.11.2018.

3. According to the first respondent, on the date of accident i.e., on 10.11.2018 at about 03.30 hours, while he was riding his two wheeler bearing registration No.TN 99 A 5258 on Marakadai – Sukkiravarpettai R.G. Junction from East to West direction, a tata indica car bearing registration No.TN 66 C 9191, came on the same road from North to South direction in a rash and negligent manner, dashed against the two wheeler and caused the accident, as a result of which, he suffered grievous injuries. Therefore, he was entitled to a claim of Rs.20 lakhs.



4. The respondents 2 and 3, who are the driver and owner of the offending vehicle remained ex-parte before the Tribunal.

5. The appellant/ Insurance Company filed counter statement denying the averments made in the claim petition and also stated that the accident had taken place only due to the rash and negligent riding by the first respondent. In any event, the compensation claimed by the 1st respondent is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the first respondent examined three witnesses as P.W.1 to P.W.3 and marked twenty documents as Exs.P1 to P20. The appellant/Insurance Company did not let in any oral and documentary evidence. The authorisation letter received from the P.S.G. Hospital, Coimbatore was marked as Court document Ex.C1. The Disability Certificate of the first respondent was marked as Court document Ex.C2.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to the rash and negligent driving by the second respondent belonging to the third respondent and directed the appellant being insurer of the offending vehicle to pay a sum of Rs.13,26,100/- as compensation to the first respondent.



8. The learned counsel for the appellant submitted that the evidence disclosed that the first respondent has also contributed to the accident and hence, the Tribunal ought to have fixed atleast 50% contributory negligence on the first respondent. The learned counsel relied upon the documents such as Rough Sketch/Ex.P2, Final Report/Ex.P5 and other evidence in support of his submissions. The learned counsel further submitted that in any case, the compensation awarded under the heads pain and suffering at Rs.2,50,000/-, loss of amenities at Rs.2,00,000/- and loss of income at Rs.2,50,000/- are excessive. The learned counsel submitted that even according to the claim petition, the first respondent was earning a sum of Rs.18,000/- per month, but the Tribunal has fixed the notional income at Rs.25,000/- per month and the same is erroneous. Hence, he prayed for allowing the appeal and setting aside the award of the Tribunal.

9. Per contra, the learned counsel for the first respondent submitted that the Tribunal has awarded just compensation under all the heads. The Tribunal has taken into consideration that the first respondent has suffered five grievous injuries and had taken treatment as in-patient in P.S.G. Hospital, Coimbatore from 10.11.2018 to 19.11.2018 and from 18.10.2019 to 22.10.2019, on two spells, for 14 days, awarded Rs.2,50,000/- towards pain and suffering. The



Tribunal also taking into consideration the fact that the first respondent had lost his front four teeth and hence, the compensation awarded under the head loss of amenities is justified.

10. As regards the income, the learned counsel for the first respondent submitted that P.W.2, who was the employer of the first respondent had categorically stated that the first respondent was earning a sum of Rs.25,000/- per month and hence, the Tribunal has rightly fixed the income at Rs.25,000/- per month and awarded Rs.2,50,000/- (Rs25,000/- X 10 months) towards loss of income for a period of 10 months. Hence, he prayed for dismissal of the appeal.

11. This Court on perusal of the records and on hearing the submissions made by the learned counsel on either side finds that the Tribunal has considered the evidence of P.W.1, wherein, he had stated clearly about the manner in which the accident took place. The appellant has not let in any contra evidence to disbelieve the evidence of P.W.1/first respondent. Further, it is seen that on the complaint given by the first respondent, a case in Crime No.324 of 2018 was registered on the file of Kovai West Traffic Police Station for the offence under Section 279 and 337 IPC. The Police had on investigation filed



the final report before the Judicial Magistrate No.VIII, Coimbatore. The Tribunal also considered Ex.P6/which is the judgment of the learned Judicial Magistrate in S.T.C.No.165 of 2019 convicting the first respondent for the aforesaid offences on his plea of guilt. This Court on perusal of Ex.P1/FIR, P5/final report and P6/Judgment of the learned Judicial Magistrate, Coimbatore and evidence of P.W.1, finds that the accident took place only on account of the rash and negligent driving of the driver of the car belonging to the third respondent and the Tribunal was justified in fixing the negligence on the part of the driver of the vehicle and the same cannot be faulted.

12. As regards the quantum, this Court finds that the disability assessed by the Doctor was 44% and the Tribunal had rightly fixed Rs.5,000/- per percentage of disability and awarded Rs.2,20,000/- under the said head. As regards the compensation under the head loss of income, it is seen that in the claim petition that the first respondent had stated that he was earning a sum of Rs.18,000/- per month at the time of accident. However the Tribunal has taken into consideration the evidence of P.W.2/employer of the first respondent, Exs.P17/payslips and P18/Salary Certificate, to fix the income at Rs.25,000/-. This Court is of the view that the income shown in the salary certificate/Ex.P18 is contrary to the claim petition itself. It is highly improbable for the first



respondent to state a lesser income than his actual income in the claim petition.

In such circumstances, Ex.P17/Payslips and P18/salary certificate cannot be believed. From the nature of injuries and the period of treatment, this Court is of the view that the number of months taken for calculating the loss of income at 10 months is disproportionate. This Court is of the view that considering the period of hospitalization of 14 days altogether in the years 2018 and 2019 and the subsequent rest period after surgery, the loss of income can only be for six months. Hence, the compensation under the head loss of income is reduced from Rs.2,50,000/- to Rs.1,08,000/- (Rs.18,000/- x 6months).

13. As regards pain and suffering, this Court is of the view that considering the nature of injuries, treatment taken by the first respondent and period of hospitalization and also of the fact that the first respondent was entitled to compensation under the head of disability, the compensation under this head Rs.2,50,000/- is excessive. The compensation awarded by the Tribunal towards loss of pain and suffering is reduced from Rs.2,50,000/- to Rs.1,00,000/-, which would be just and proper.

14. The first respondent has taken treatment as an in-patient in P.S.G. Hospital, Coimbatore from 10.11.2018 to 19.11.2018 and from 18.10.2019 to



22.10.2019, on two spells, for 14 days. The Tribunal considering the period of hospitalisation for 14 days, awarded Rs.20,000/- towards attendant charges.

Apart from that, the Tribunal has awarded an excessive sum of Rs.2,00,000/- towards loss of amenities, which is not justified and therefore, the same is reduced to Rs.50,000/-. The amount of compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and sufferings	2,50,000	1,00,000	Reduced
2.	Loss of amenities	2,00,000	50,000	Reduced
3.	Extra nouishment	20,000	20,000	Confirmed
4.	Transportation	10,000	10,000	Confirmed
5.	Attendant charges	20,000	20,000	Confirmed
6.	Medical expenses	3,53,100	3,53,100	Confirmed
7.	Damage to clothes	3,000	3,000	Confirmed
8.	Loss of income	2,50,000	1,08,000	Reduced
9.	Disability	2,20,000	2,20,000	Confirmed
	Total	13,26,100	8,84,100	Reduced by Rs.4,42,000/-



15. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.13,26,100/- awarded by the Tribunal is hereby reduced to Rs.8,84,100/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the modified award amount now determined by this Court, along with proportionate interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.2048 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

06.07.2023

Index: Yes/No
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SUNDER MOHAN,J.

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To

- 1.The Motor Accident Claims Tribunal /
Special Sub Court, Coimbatore.
- 2.The Section Officer
VR Section, High Court of Madras.

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12.07.2023