



C.M.A.No.3884 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.3884 of 2019  
and CMP.Nos.22132 of 2019 & 20558 of 2022

The Oriental Insurance Co. Ltd.,  
Oriental House, 2<sup>nd</sup> Floor,  
Old No.115, New No.216, Prakasasam Salai,  
Broadway, Chennai – 600 108.

...Appellant

Vs.

1. G.Manoj

2. Lubin Varghese

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award and decree dated 19.02.2019 passed in M.A.C.O.P.No.4895 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

For Appellants : Mr.R.Sivakumar

For Respondents : Mr.P.Keerthivarman, for R1  
Exparte before the Tribunal, for R2

**JUDGEMENT**



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Challenging the award and decree dated 19.02.2019 passed in M.A.C.O.P.No.4895 of 2013 on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai, the appellant has preferred this Appeal.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

The 1<sup>st</sup> respondent filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'MV Act') as against the appellant and the 2<sup>nd</sup> respondent, claiming a compensation of Rs.30,00,000/- alleging that, on 22.07.2013 at about 13.45 Hrs., when he was crossing the road along with his wife at R.G.Sali, Kandanchavadi, near Adyar Juice Park, a motor cycle bearing Regn.No.TN-07-BS-5852 owned by the 2<sup>nd</sup> respondent, insured with the appellant, driven by its rider in a rash and negligent manner, came from north to south direction and hit the 1<sup>st</sup> respondent, due to which, he sustained grievous injuries and got admitted in the hospital. After contest, the Tribunal, vide impugned judgment dated 19.02.2019 awarded a compensation of Rs.18,47,900/- and fixed the entire liability as against the appellant/insurance



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company. Aggrieved with the said order, the present appeal has been filed by the insurance company questioning the quantum of compensation as also the liability of the insurer.

3. Learned counsel for the appellant submitted that, the Medical board assessed 50% permanent disability and for the same, the 1<sup>st</sup> respondent is entitled to claim compensation under the head “Loss of earning capacity”. However, the Tribunal, had awarded a compensation of Rs.10,12,023.60/- under the head of Loss of Earning capacity and also awarded a sum of Rs.1,50,000/- under the head Compensation for disability, which is not sustainable and the same are liable to be interfered with. Further, a sum of Rs.50,000/- was awarded under the head of Loss of Amenities, which is not permissible and same is contrary to the various decisions rendered by the Hon'ble Apex Court and the compensation awarded under the other heads are also on the higher side and the same needs to be modified. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing for the 1<sup>st</sup> respondent submitted that, due to the accident, the 1<sup>st</sup> respondent sustained grievous injuries all over his body,



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for which, he took treatment for about 31 days during different periods and the medical board had also assessed 50% permanent disability. Further, pursuant to the accident, the 1<sup>st</sup> respondent is not able to perform his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Hence, the tribunal, after taking into consideration all the above said facts and after carefully perusing the documents placed before it, passed the impugned award fixing a compensation of Rs.18,47,845/-, payable by the appellant/insurance company to the 1<sup>st</sup> respondent, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant and the learned counsel for the 1<sup>st</sup> respondent and perused the material documents placed on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/insurance company is with regard to the quantum of compensation awarded. A perusal of Ex.C1, the Disability Certificate reveals that, the first respondent has sustained permanent disability of 50%. This



document would clearly prove that the 1<sup>st</sup> respondent can resume his job after his treatment and that the said injury sustained by him would not have any impact on the job performed by the claimant as also his earning capacity.

7. However, the Tribunal, to assess the loss of earning capacity, had adopted multiplier method which is totally erroneous and is liable to be modified. Therefore, taking a sum of Rs.5,000/- per percentage of disability and fixing the disability sustained by the 1<sup>st</sup> respondent at 50%, the loss of earning due to disability is reassessed on percentage basis and accordingly, this Court awards a sum of Rs.2,50,000/- towards loss of earning capacity ( $\text{Rs.5,000/-} \times 50 = 2,50,000/-$ ). Further, the Tribunal has awarded a sum of Rs.1,50,000/- towards compensation for disability, which cannot be granted, as already compensation has been awarded under the head loss of earning capacity. Therefore, the said compensation awarded requires to be interfered.

8. Similarly, a sum of Rs.50,000/- has been awarded under the head Loss of Amenities, which is not permissible and the same also has to be interfered with. A sum of Rs.60,000/- has been awarded under the head extra



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nourishment, which, in the considered view of this Court is also on the higher side considering the injuries sustained by the claimant. This Court feels that a sum of Rs.25,000/- under the head extra nourishment would be a just and reasonable compensation and, accordingly, the said sum is awarded under the said head.

9. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

| <b>Heads</b>                | <b>Awarded by the Tribunal (Amount in Rs.)</b> | <b>Awarded by this Court (Amount in Rs.)</b> |
|-----------------------------|------------------------------------------------|----------------------------------------------|
| Loss of earning capacity    | 10,12,023.60/-                                 | 2,50,000/-<br>(5000*50)                      |
| Compensation for disability | 1,50,000/-                                     | -                                            |
| Pain and suffering          | 50,000/-                                       | 50,000/-                                     |
| Loss of income              | 42,522/-                                       | 42,522/-                                     |
| Transport to hospital       | 10,000/-                                       | 10,000/-                                     |



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| Heads                                                | Awarded by the Tribunal (Amount in Rs.) | Awarded by this Court (Amount in Rs.) |
|------------------------------------------------------|-----------------------------------------|---------------------------------------|
| Extra-nourishment                                    | 60,000/-                                | 25,000/-                              |
| Damage to clothing                                   | 5,000/-                                 | 5,000/-                               |
| Medical expenses                                     | 4,28,300/-                              | 4,28,300/-                            |
| Loss of income to the family & service of attendants | 20,000/-                                | 20,000/-                              |
| Loss of Amenities                                    | 50,000/-                                | -                                     |
| Future Medical Expenses                              | 20,000/-                                | 20,000/-                              |
| <b>Total</b>                                         | <b>Rs.18,47,845.60 ps.</b>              | <b>Rs.8,50,822</b>                    |

11. Accordingly, the appeal is **partly** allowed in the aforesaid terms and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.18,47,845.60 ps.** to **Rs.8,50,822/-**. The appellant/Insurance Company is directed to deposit the entire modified award amount as ordered by this Court to the credit of M.A.C.O.P.No.4895 of 2013 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 four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1<sup>st</sup> respondent



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through RTGS within a period of two (2) weeks thereafter. Any amount, in excess of the award ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petitions are closed.

**03.10.2023**

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Index : Yes / No  
Speaking Order : Yes / No  
Neutral Citation Case : Yes / No

To

- 1.The Motor Accident Claims Tribunal,  
(Sub Court), Chidambaram.
- 2.The Section Officer, V.R. Section, High Court, Madras.



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**M.DHANDAPANI, J.**

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