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CMA No.700 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.700 of 2022 and
C.M.P. No.5095 of 2022

The National Insurance Company Limited,
Motor Third Party Hub
Regina Mansion, No.46, 3rd Floor,
Moore Street, Chennai – 600 001.

..

Appellant

Vs.

1.AR.Loganathan

2.L.R.Vijay Balaji

..

Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 13.08.2021 made in MCOP.No.5374 of 2018 on the file of the Motor Accidents Claims Tribunal (VI Judge, Small Causes Court), at Chennai.

For Appellant : Ms.R.Sreevidhya

For Respondents : Mr.K.Varadha Kamaraj
for R1
No appearance for R2



CMA No.700 of 2022

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the appellant/Insurance Company questioning the quantum of compensation awarded by the Tribunal.

2. The appellant / Insurance Company is the second respondent in MCOP.No.5374 of 2018 on the file of the Motor Accidents Claims Tribunal / VI Court of Small Causes at Chennai.

3. According to the 1st respondent, on the date of accident, he was a pedestrian proceeding to cross the road in the pedestrian cross from South to North, in front of Cremation Ground Gate, Kilpauk, Chennai. At that time, a motorcycle bearing Regn.No.TN02 BB 9489 proceeding from West to East ridden in a rash and negligent manner dashed against him. Due to the said impact, the 1st respondent was thrown out and sustained multiple grievous injuries. Hence, he filed claim petition claiming a sum of Rs.10,00,000/- as compensation against the 2nd respondent, owner of the motorcycle and the appellant, being the insurer of the said vehicle.



CMA No.700 of 2022

WEB COPY

4. The 2nd respondent remained exparte before the Tribunal.

5. The appellant/insurance company filed counter denying the averments made in the claim petition including the manner of accident. They have stated that the accident has not occurred as alleged in the claim petition. The 1st respondent suddenly crossed the road from South to North, dashed against the motorcycle and invited the accident. The age, occupation and nature of injuries, period of treatment and income of the 1st respondent were denied. The compensation claimed by the 1st respondent was highly excessive and prayed for dismissal of the claim petitions.

6. Before the Tribunal, the 1st respondent examined himself as PW1 and Dr.Mathiazhagan was examined as PW2. Eleven documents were marked as Exs.P.1 to P11. The appellant /insurance company has not examined any witness nor marked any document on their side.

7. The Tribunal, after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the rider of the motorcycle belonging to the 2nd respondent and directed the



CMA No.700 of 2022

appellant/Insurance company, being the insurer of the motorcycle to pay a sum of Rs.4,67,100/- as compensation to the 1st respondent.

8. Challenging the quantum of compensation awarded by the Tribunal, the appellant / Insurance Company has filed the present appeal.

9. The learned counsel appearing for the appellant / insurance company submitted the 1st respondent had not produced any document to establish that he suffered loss of earning capacity on account of injuries sustained by him in the accident. Further, he had not subjected himself for examination by the Medical Board. PW2 who issued disability certificate is not the doctor who treated the 1st respondent. The Tribunal ought not to have accepted the disability certificate issued by PW2-Doctor for ascertaining the functional disability. The Tribunal erred in adopting multiplier method in awarding compensation towards functional disability to the 1st respondent. The 1st respondent is entitled to compensation towards disability only by adopting percentage method. The learned counsel fairly submitted that the award of compensation under other heads are just and reasonable and prayed for



CMA No.700 of 2022

reducing the award passed by the Tribunal.

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10. Per contra, the learned counsel appearing for the 1st respondent contended that PW2 – Doctor was examined and cross examination by the appellant had not dislodged his evidence. The disability certificate issued by PW2-Doctor assessing the disability at 35% was marked as Ex.P11. However, the Tribunal erroneously reduced the same to 30% without any basis. The 1st respondent was working as a security guard at the time of accident. In his deposition as PW1, he has deposed that due to the injuries suffered by him in the accident, he was unable to do the work he was doing earlier. The learned counsel further submitted that the 1st respondent had taken treatment for almost six months and the Tribunal failed to award any amount towards loss of income during treatment period. The compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal.



CMA No.700 of 2022

WEB COPY 11. Heard the learned counsel appearing for the appellant as well as 1st respondent and perused the materials available on record. Though notice has been ordered to the second respondent, the same has been returned as “no such person”. He remained exparte before the Tribunal and hence notice to him is dispensed with.

12. The only question involved in the instant appeal is “whether the compensation awarded by the Tribunal is just and reasonable”.

13. From the materials available on record, it is seen that the 1st respondent examined PW2-Doctor who issued Ex.P11-disability certificate. Ex.P5-discharge summary would reveal that the 1st respondent was diagnosed with head injury/subarachnoid haemorrhage/left clavicle fracture. He had taken treatment for four days and records show that he recovered from the injuries. The nature of injuries per se do not indicate any functional disability. The 1st respondent had also not established that he suffered functional disability and subsequent loss of income on account of the



CMA No.700 of 2022

injuries sustained by him in the accident. Hence, this court is of the view that the Tribunal erred in adopting multiplier in awarding compensation towards functional disability. PW2-Doctor has examined the 1st respondent had issued disability certificate assessing the disability as 35%. However, the Tribunal, without any basis had reduced the same to 30% which is not proper. In the facts and circumstances of the case, this Court is of the view that the 1st respondent is entitled to compensation for 35% disability by adopting percentage method. The accident is of the year 2018. Hence, the 1st respondent is entitled to Rs.5,000/- per percentage of disability. Accordingly, the compensation awarded by the Tribunal towards functional disability at Rs.3,56,400/- is reduced to Rs.1,75,000/- (5000 x 35) under the head disability.

14. From the award of the Tribunal, it is seen that no amount was awarded towards loss of income. Considering the nature of injuries and period of treatment, this court is of the view that the 1st respondent is entitled for compensation towards loss of income for four months. Though the 1st respondent has claimed that at the time of accident, he was working as a



CMA No.700 of 2022

security guard, earning a sum of Rs.12,000/- per month, he has not filed any document to substantiate the same. Considering the age, avocation and year of accident, the notional income of the 1st respondent is fixed as Rs.10,000/- per month. Considering the nature of injuries, the 1st respondent could not have attended his work atleast for a period of four months. Thus, a sum of Rs.40,000/- (Rs.10,000 x 4) is awarded towards loss of income. The compensation awarded by the Tribunal at Rs.10,000/- under the head mental agony is not proper and the same is set aside. Due to the surgery undergone by the 1st respondent, he would have suffered some discomfort. Hence, the sum of Rs.15,000/- awarded by the Tribunal under the head “loss of amenities” is enhanced to Rs.20,000/-. The compensation awarded under other heads are just and reasonable and hence the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	3,56,400/-	1,75,000/-	Reduced
2.	Medical expenses	38,183/-	38,183/-	Confirmed



CMA No.700 of 2022

3.	Pain and suffering	25,000/-	25,000/-	Confirmed
4.	Nutrition expenses	15,000/-	15,000/-	Confirmed
5.	Transportation	5,000/-	5,000/-	Confirmed
6.	Damages to clothes	1,000/-	1,000/-	Confirmed
7.	Attender charges	1,500/-	1,500/-	Confirmed
8.	Mental Agony	10,000/-	-	Set aside
9.	Loss of amenities	15,000/-	20,000/-	Enhanced
10.	Loss of income	-	40,000/-	Granted
	Total	4,67,083/- rounded off to Rs.4,67,100/-	3,20,683/- rounded off to Rs.3,20,700/-	Reduced by 1,46,400/-

15. In the result this Civil Miscellaneous Appeal is partly allowed reducing the compensation from Rs.4,67,100/- to Rs.3,20,700/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the award amount, now determined by this Court alongwith interest and cost (excluding the default period, if any), 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 1st respondent is permitted to withdraw the award amount



CMA No.700 of 2022

alongwith interest and cost, less the amount already withdrawn, if any. No costs. Consequently, connected Miscellaneous Petition is closed.

28.07.2023

rg

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To :

1. The IV Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.

2. The Section Officer,
VR Section,
High Court,
Madras.



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CMA No.700 of 2022

SUNDER MOHAN, J.

rgr

C.M.A.No.700 of 2022

28.07.2023