



C.M.A.No.338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MRS. JUSTICE **N.MALA**

C.M.A.No.338 of 2023
in C.M.P.Nos.11942 & 2814 of 2023

National Insurance Co.Ltd.,
Divisional Office,
Kumaran Road, Tiruppur.

.. Appellant

Vs.

1.Nachimuthu
S.o.Kittusamy

2.Saravanavel
S/o.Selvaganessubramaniam

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.04.2022 passed in M.C.O.P.No.557 of 2016 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Dharapuram.

For Appellant : Mr.S.Vadivel

For R1 : Mr.K.Ventakeswaran



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JUDGMENT

WEB COPY The judgment and decree dated 11.04.2022 passed in M.C.O.P.No.557 of 2016 on the file of the Motor Accident Claims Tribunal, (Subordinate Court), Dharapuram, is under challenge in the present civil miscellaneous appeal.

2. This appeal is filed by the insurance company / appellant challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal (for brevity "the tribunal").

3. According to the claimant / first respondent, on 27.05.2016, while he was riding his TVS Moped, a car belonging to the second respondent and insured with the insurance company / appellant, driven by its driver in a rash and negligent manner, hit his TVS Moped from behind, thus causing the him grievous injuries.

4. The claimant / first respondent was 55 years old at the time of accident and as an agriculturist was earning a sum of Rs.20,000/- per month. Further, according to the claimant / first respondent, the accident occurred only due to the rash and negligent driving of the car driver. The claimant/ first respondent therefore filed the



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claim petition before the tribunal claiming a sum of Rs.10,00,000/- as compensation for the injuries suffered by him in the accident.

5. The insurance company / appellant and the second respondent, who were the respondents before the tribunal, filed separate counter affidavits to the claim petition.

6. The second respondent in his counter affidavit denied all the averments in the claim petition apart from disputing the negligence, quantum and liability. According to the second respondent, the vehicle was insured with the insurance company / appellant and so, liability, if any, was that of the insurance company / appellant.

7. The insurance company / appellant in its counter affidavit denied all the allegations and averments made in the claim petition apart from disputing negligence, quantum and liability.



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8. Before the tribunal, the claimant / first respondent examined himself as PW1 and marked exhibits P1 to P15 and on the side of the respondents, no oral or documentary evidence was adduced.

9. The tribunal on an assessment of the entire evidence on record found that the accident had occurred due to the negligence of the driver of the car and therefore, assessed the compensation at Rs.16,46,000/- along with 7.5% interest and mulcted the liability on the insurance company / appellant.

10. Aggrieved by the award passed by the tribunal, the insurance company / appellant has preferred the above appeal questioning the quantum of compensation.

11. The learned counsel for the insurance company / appellant submitted that the award of the tribunal under the heads pain and sufferings, loss of earning capacity and attender charges is very much on the higher side and disproportionate to the nature of injuries and disability suffered by the claimant / first respondent. He further submitted that the assessment of notional monthly income at



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Rs.12,526/- is exorbitant and therefore, the quantum of the compensation awarded by the tribunal under the aforesaid heads may be modified.

12. The learned counsel for the claimant / first respondent on the other hand submitted that the award of the tribunal is fair, just and reasonable and did not warrant any interference in this appeal.

13. Heard Mr.S.Vadivel, learned counsel appearing for the insurance company / appellant and Ms.S.Saranya, learned counsel appearing for the claimant / first respondent and perused the materials placed on record.

14. It is seen that the claimant / first respondent was an agriculturist earning a sum of Rs.20,000/- per month. In the accident, the claimant / first respondent sustained fracture injuries in his left hip, fracture in the frontal region and injury in his leg. The District Medical Board, which assessed the disability of the claimant / first respondent, certified under Ex-C1 that the claimant / first respondent suffered 68% partial permanent disability. The tribunal considering the age of the claimant and the nature of injuries sustained by him, assessed the functional disability also



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at 68 % and awarded a sum of Rs.12,36,765/- as compensation towards loss of earning capacity.

15. It is seen that absolutely no evidence was filed in proof of the income of the claimant / first respondent. The claimant / first respondent was aged about 55 years at the time of accident which took place in 2016. I am of the view that the notional income can be fixed reasonably at Rs.11,000/- per month. Even the functional disability assessed by the tribunal, considering the nature of injuries sustained by the claimant and its effect on his earning capacity, in my view is on the higher side.

16. As the claimant / first respondent suffered fracture in the hip bone and the same was assessed as partial permanent disability by the District Medical Board, I am of the view that the functional disability can be fixed at 40%.

17. It is also seen that the claimant / first respondent was hospitalized for the treatment of his injuries for a period of eleven days from 27.05.2016 to 06.06.2016 and therefore, I am of the view that the award towards attender charges is on the



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higher side and the same is reduced to Rs.15,000/-.

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18. The tribunal having adopted the multiplier method, awarded exorbitant amount towards pain and sufferings and therefore, considering the fact that the claimant / first respondent was hospitalized only for eleven days and the injuries sustained by him in the accident were partial permanent in nature, the award towards pain and sufferings is reduced to Rs.50,000/-.

19. In view of the foregoing discussions, the award of the tribunal is modified as follows:

<i>S.No.</i>	<i>Headings</i>	<i>Compensation awarded by the tribunal (in Rs.)</i>	<i>Modified compensation amount (in Rs.)</i>
1	Pain and sufferings	1,00,000/-	50,000/-
2	Loss of earning capacity	12,36,765/-	5,80,800/-
3	Medical expenditures	2,57,008/-	2,57,008/-
4	Attender's charges	20,000/-	15,000/-
5	Transportation Charges	10,000/-	10,000/-
6	Extra-nourishment Charges	20,000/-	20,000/-
7	Clothes and articles	2,000/-	2,000/-
Total		16,45,773/-	9,34,808/-
Rounded off to the nearest thousands		16,46,000/-	9,35,000/-

The award of the tribunal is modified reducing the compensation from Rs.16,46,000/- to Rs.9,35,000/- along with interest @ 7.5% from the date of filing



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of the claim petition till the date of deposit.

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20. At this juncture, it is submitted by the learned counsel for the insurance company / appellant that 50% of the award amount has already been deposited pursuant to the interim order dated 13.02.2023 passed by this Court in C.M.P.No.2814 of 2023 in C.M.A.No.338 of 2023.

21. In such view of the matter, the insurance company / appellant is directed to deposit the balance modified amount along with 7.5% interest per annum from the date of filing of the claim petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant / first respondent shall be entitled to withdraw the same by filing appropriate application before the tribunal.

With the above modifications and directions, this civil miscellaneous appeal is partly allowed. There shall be no order as to costs. Connected C.M.Ps. are closed.

30.06.2023

Index: Yes/No
nsd

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To

The Motor Accident Claims Tribunal Authority /
Subordinate Judge,
Motor Accident Claims Tribunal,
(Subordinate Court), Dharapuram.



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N.MALA, J.

nsd

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