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C.M.A.No.2810 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2810 of 2017

and

CMP No.16050 of 2017

M/s. United India Insurance Co. Ltd.,
Motor Third Party Hub,
Sillingi Building, IV Floor
No.134, Greams Road
Chennai-600 006.

... Appellant

..Vs..

1.Panchamoorthy
2.R.Devakumar

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 12.04.2017 made in MCOP.No.1933 of 2015, on the file of the Motor Accident Claims Tribunal / III Judge, Court of Small Causes, Chennai.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.R.Naliyappan for R1
R2- Exparte

J U D G M E N T



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This appeal has been filed by the Appellant/Insurance Company challenging the award dated 12.04.2017 passed by the the Motor Accident Claims Tribunal / III Judge, Court of Small Causes, Chennai in MCOP.No.1933 of 2015.

2. The United India Insurance Company Limited has filed this appeal questioning the quantum of compensation.

3. The accident occurred on 14.02.2015 at 21.20 hours, at Mount Poonamallee Road near DLF Company. The Mount Traffic Investigation registered a case in Crime No.99/M2/2015 in connection with the accident. When the 1st respondent/claimant was walking along the Mount Poonamallee Road, near DLF company pedestrian cross from south to north direction, a motor cycle bearing Registration No.TN 11 H 1003 came from west to east direction in a rash and negligent manner and dashed against the claimant. Due to the impact, the first respondent/claimant, due to the accident sustained grievous injuries: i) Fracture over left leg, ii) Severe head injury, iii) Contusion over hip and iv) multiple injuries all over the



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body. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.7,00,000/-.

4. The learned counsel appearing on behalf of the appellant/Insurance Company mainly contended that the quantum of compensation granted by the Tribunal is exorbitant. The first respondent/claimant is working as Cab Escort in M/s.G.H.S Security Service and there is no loss of income. Though the Tribunal has granted a sum of Rs.3,24,000/- towards loss of earning power, it has separately granted a sum of Rs.1,80,000/- towards disability and Rs.25,000/- towards loss of amenities are totally unjustifiable. The compensation granted towards loss of earnings, pain and suffering, mental and physical shock, attender charges, damages to clothing and articles, transport expenses and extra nourishment is on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal. The Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. Thus, the compensation awarded is



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exorbitant. For the aforesaid reasons, the award is liable to be dismissed.

5. The learned counsel for the 1st respondent/claimant disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded the compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

6. The PW2 doctor assessed the disability at 60% for the fracture of femur shaft in the right leg. In the claim petition, it is stated that the claimant was a Cab Escort and earning a sum of Rs.10,000/- per month, but no proof of income has been filed. In the absence of such proof, the Tribunal has fixed the monthly income as Rs.7500/- and considering age and nature of the injuries, fixed the disability at 20% and awarded a sum of Rs.3,24,000/- ($\text{Rs.7500} \times 20\% = 1,500 \times 12 \times 18$) towards loss of earnings by applying multiplier method. However, the Tribunal has separately awarded a sum of Rs.1,80,000/- ($60\% \times 3000/-$) under the head of disability by applying percentage method and also awarded a sum of Rs.25,000/- towards loss of amenities, without any basis as rightly contended by the learned counsel for



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the appellant/Insurance Company and it needs interference by this Court.

Hence, the compensation of Rs.1,80,000/- awarded towards disability and Rs.25,000/- awarded towards loss of amenities is hereby deleted.

7. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

8. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income (250 x 207)	51,750/-	51,750/-
Attender charges	6,750/-	6,750/-
Transport to hospital	10,000/-	10,000/-
Extra Nourishment	30,000/-	30,000/-
Damage to clothing	2,500/-	2,500/-
Pain and suffering	50,000/-	50,000/-
Damages for mental	20,000/-	20,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
and physical shock		
Loss of amenities	25,000/-	Nil
Disability of 60% @ Rs.3000/-	1,80,000/-	Nil
Loss of earnings	3,24,000/-	3,24,000/-
Total	7,00,000/-	4,95,000/-

9.(i) Thus, the total amount of compensation is reduced from Rs.7,00,000/- to Rs.4,95,000/-. The Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.4,95,000/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1933 of 2015 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the first respondent/claimant along with accrued interest through RTGS within a period of two weeks thereafter.



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(iii) If the entire amount as ordered by the Claims Tribunal has been deposited by the appellant/Insurance Company already, after satisfaction of the award amount, the appellant is entitled to withdraw the balance amount lying in Court deposit.

10. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected Miscellaneous Petition is closed.

14.06.2023

Index:Yes/No
Speaking/Non-speaking order
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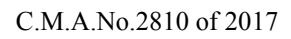
A.A.NAKKIRAN, J.
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To

1.The Motor Accident Claims Tribunal /
III Judge, Court of Small Causes, Chennai.

2. The Section Officer

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