



C.M.A.No.4697 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.4697 of 2019 and
C.M.P.No.26697 of 2019

United India Insurance Co.Ltd.,
Silingi Buildings,
4th Floor, No.124,
Greens Road, Chennai – 6.

... Appellant

Vs.

1. E.Kalyana Sundaram
2. K.Mohan
Respondents

...

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decretal order dated 22.04.2019 in M.C.O.P.No.4924 of 2014 passed by the Special Sub Judge, Court of Small Causes, MACT, Chennai

For Appellant : Mr.P.Sankaranarayanan

For Respondents : No Appearance [R1]
Not Ready in Notice [R2]

JUDGMENT

Aggrieved by the compensation granted by the Special Sub Judge,
Court of Small Causes, MACT, Chennai in M.C.O.P.No. 4924 of 2014



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vide order dated 22.04.2019, the present appeal has been filed before this Court.

2. On 31.01.2014 at about 16.30 hrs, when the first respondent / claimant was riding an auto rickshaw bearing Reg.No.TN-19-B-5711, at that time an Innova car bearing Reg No.TN-07-BL-1814 driven by its driver in a rash and negligent manner dashed against the auto rickshaw driven by the first respondent / claimant. Due to the said impact, the claimant sustained grievous injuries all over the body. Therefore, the injured / claimant filed a petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation.

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked Exs.P.1 to P.6. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.7,99,600/- under various heads. Aggrieved over the same, the appellant / insurance company has preferred the present appeal.



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4. The learned counsel appearing for the appellant / insurance company submitted that, admittedly the medical board assessed the disability of the injured at 22%. Though it is seen from the deposition of P.W.1 during his chief examination that after the accident, he was unable to drive his auto, however, during his cross examination he has stated that, he was driving another auto after the said accident and was earning a sum of Rs.800/- per day, without considering the same, instead of adopting percentage method the Tribunal adopted multiplier method and awarded a sum of Rs.7,99,600/- which is *per se* unsustainable. Further the award under the other heads are also highly excessive. Accordingly, he prayed to pass appropriate orders.

5. Though the notice was served on the first respondent, no one appeared on his behalf. Considering the period of pendency of the appeal, the same is disposed of based on materials available on record.

6. Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. The factum and manner of the accident is not in dispute.



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Therefore, this Court is not entering into the said aspect. The only grievance of the appellant / insurance company is with regard to the adoption of multiplier method instead of percentage method. A perusal of the award passed by the Tribunal reveals that, due to the injuries sustained by the claimant, the Medical Board assessed the disability of the first respondent at 22%. On a perusal of the award reveals that during the chief examination of P.W.1, he has deposed that consequent to the accident he was unable to continue his avocation, however, during his cross examination, he has opined that he was driving another auto after the said accident and was earning a sum of Rs.800/- per day, without considering the same, the Tribunal has erroneously adopted multiplier method as if the claimant was suffering from functional disability. Hence, this Court is inclined to modify the award passed by the Tribunal by adopting percentage method instead of multiplier method. Admittedly, the accident is of the year 2014 and at the relevant point of time, per percentage of disability is Rs.4,000/-. Hence, this Court is inclined to fix a sum of Rs.4,000/- at the rate of per percentage of disability. Therefore, the amount awarded under the head "loss of earning capacity" stands modified to a sum of Rs.88,000/- ($22\% \times \text{Rs.4,000/-} = \text{Rs.88,000/-}$).



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8. Further, this Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

9. In view of the above, the compensation awarded by the Tribunal in M.C.O.P.No.4924 of 2014 is modified as under :-

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of Earning capacity	5,91,360/-	88,000/- (reduced)
2	Compensation for Disability	66,000/-	66,000/-
3	Pain and Sufferings	40,000/-	40,000/-
4	Loss of Income	31,200/-	31,200/-
5	Transport to hospital	5,000/-	5,000/-
6	Extra-nourishment	15,000/-	15,000/-
7	Damage to Clothing	5,000/-	5,000/-
8	Medical expenses	953/-	953/-
9	Loss of amenities	25,000/-	25,000/-
10	Mental agony to the family members of the petitioner	20,000/-	20,000/-
	Total	7,99,513/-	2,96,153/-

10. Accordingly, the appeal in C.M.A.No.4697 of 2019 is partly



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allowed and the compensation amount is reduced from **Rs.7,99,513/-** to **Rs.2,96,153/-** and the appellant/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.4924 of 2014 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 six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To



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1. Special Sub Judge, Court of Small Causes, MACT, Chennai
2. The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

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