



C.M.A.No.3327 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.3327 of 2017

and

C.M.P No.21055 of 2017

United India Insurance Company Ltd.,
No.280, Ooty Main Road
Mettupalayam.

.. Appellant

Vs.

1.S.Marimuthu
2.S.Muralidharan

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 08.09.2015 made in MCOP No.143 of 2012 on the file of the Motor Accident Claims Tribunal/ Subordinate Judge, Sathyamangalam.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.R.Nalliyappan for R1



C.M.A.No.3327 of 2017

J U D G M E N T

WEB COPY

The appeal on hand is filed against the Award and decree dated 08.09.2015 passed in MCOP No.143 of 2012, on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Sathyamangalam.

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

3. The accident occurred on 05.02.2012 at 5.30 p.m., at Mettupalayam, Ooty Main Road, near Tan-India. The Mettupalayam Police Station registered a case in Crime No.114 of 2012. The 1st respondent/claimant was travelling as pillion rider in a Yamaha Libero Motor cycle bearing Registration No. TN-40-C-2803 from north to south direction. The first respondent/claimant, due to the accident sustained grievous injuries including head injury and frontal extradural hematoma, fronto-parietal RT. Temporal and Pons Parenchymal contusions. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with



C.M.A.No.3327 of 2017

reference to the documents and evidences. The appellant/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.7,26,867/-.

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 Tribunal has failed to adjudicate the issue properly on negligence aspect. The rider of the motor cycle failed to exercise reasonable care while driving and was equally responsible for the accident. As per Ex.P4-Motor Vehicle Inspection report, the driver of the 2nd respondent vehicle did not possess driving license at the time of accident and in the absence of driving license, the Insurance Company cannot be made liable. The owner of the vehicle remained exparte and failed to furnish driving license of the driver of the vehicle. The PW2 doctor is not an ophthalmologist and he has not treated the claimant and in fact he is not a competent doctor to assess disability for the alleged vision impairment. As per the disability certificate and evidence of doctor, the alleged disability is



C.M.A.No.3327 of 2017

only partial permanent. However, the Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. The Tribunal has erroneously assessed the disability at 26% and it has to be reduced. The compensation granted towards future loss of income, pain and suffering, medical bills, attender charges and extra nourishment are on the higher side and based on that, the appellant/Insurance Company has chosen to file the present appeal. The claimant was working as a Spinning Master at Ganapthy Spinning Mill and was earning a sum of Rs.12,000/-. Therefore, there is no future loss of income. Thus, the compensation awarded by the Tribunal is 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. Insofar as the assessment of disability by the Tribunal is concerned, the PW2/doctor assessed the disability at 26% for head injury and vision impairment. Considering the nature of injuries and the evidence of PW2/doctor, and Ex.P10, x-ray, Ex.P11-C.T scan Ex.P14 disability certificate, the Tribunal has fixed the disability at 26% as assessed by PW2/doctor. Hence, the disability fixed by the Tribunal is a correct assessment.

7. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion that it is not a functional disability and in fact, the claimant was working as a Spinning Master at Ganapthy Spinning Mill and was earning a sum of Rs.12,000/-. Therefore, there is no future loss of income. This being the factum, the award of compensation by adopting the multiplier is unnecessary. Contrary, a sum of Rs.3,000/- for 1% disability shall be granted considering the year of the accident is 2012. Accordingly, the disability compensation is reduced to Rs.78,000/- by this Court instead of Rs.5,05,440/- assessed by the Tribunal.



WEB COPY

8. As seen from Ex.P15 and Ex.P16 discharge summaries, after the accident, the claimant was admitted in Mettupalayam Government Hospital for first aid treatment and thereafter, he had taken treatment at Kovai Krishna Hospital from 05.02.2012 to 23.02.2012 and 17.10.2012 to 25.10.2012. In such circumstances, the compensation awarded towards pain and suffering, attender charges and extra nourishment is not adequate and hence, this Court is inclined to enhance a sum of Rs.50,000/- instead of Rs.25,000/- towards pain and suffering, a sum of Rs.20,000/- instead of Rs.10,000/- towards attender charges and a sum of Rs.15,000/- instead of Rs.10,000/- towards extra nourishment.

9. 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.

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



C.M.A.No.3327 of 2017

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of earning	5,05,440/- (9000x 12 x 26/100 x 18)	Rs.78,000/- (Disability at 26% x 3000)
Pain and suffering	25,000/-	50,000/-
Medical Bills Ex.P9	1,38,827/-	1,38,827/-
Attender charges	10,000/-	20,000/-
Extra Nourishment	10,000/-	15,000/-
Loss of Income	9,000/-	9,000/-
Transport to hospital	28,600/-	28,600/-
Total	7,26,867/-	3,39,427/-

11. In the result,

(i) This appeal is partly allowed and the Appellant Insurance Company is directed to deposit the modified award amount i.e, Rs.3,39,427/- 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.143 of 2012 within a period of six weeks from the date of receipt of a copy of this



C.M.A.No.3327 of 2017

Judgment.

WEB COPY (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. No costs. Consequently, connected Miscellaneous Petition is closed.

14.06.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
uma

To

- 1.The Motor Accident Claims Tribunal,
Subordinate Judge, Sathyamangalam.
- 2.The Section Officer,
V.R Section,
High Court, Madras.



WEB COPY



C.M.A.No.3327 of 2017

A.A.NAKKIRAN, J.
uma

C.M.A.No.3327 of 2017

and

CMP No.21055 of 2017

14.06.2023