



WEB COPY



C.M.A.No.4609 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4609 of 2019
and C.M.P.No.26145 of 2019

The National Insurance Company Ltd.,
No.7, Raja Street,
Gobichettypalayam.

.. Appellant

Versus

1.Minor Jayakumar @ Vijayakumar
2.Mayavan
3.Pappathi Ammal

4.The Oriental Insurance Company Ltd.,
K.A.Complex, Ist Floor,
No.20, Gandhi Road,
Kallakuruchi – 602 202.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 28.03.2014 made in MACT O.P.No. 1341 of 2009 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Tiruppur.



C.M.A.No.4609 of 2019

For Appellant : M/s.N.B.Surekha
For Respondents
For R1 & R2 : No appearance
For R3 : Died
For R4 : Mr.R.Sivakumar

J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal, Subordinate Court, Tiruppur, in M.C.O.P.No. 1341 of 2009 dated 28.03.2014.

2. The Insurance Company is the appellant herein filed the above appeal to set aside the judgment passed by the Tribunal in MACT.O.P.No.1341 of 2009 dated 28.03.2014 on the ground of quantum as well as liability.

3. Brief facts of the case:-

On 20.08.2009 at about 06.15 hours, when the claim petitioner / 1st



C.M.A.No.4609 of 2019

respondent herein, as a cleaner, travelling in a van bearing Regn.No.TN-57-X-5458 driven by its driver, on the extreme left hand side of the road, a Lorry bearing Regn.No.TDX-3240 driven by its driver, in a rash and negligent manner, without following the traffic rules, dashed against the van. Hence, the accident occurred, due to which, the petitioner sustained grievous injuries and immediately he was taken to JIPMER hospital and he was under treatment. Hence, the claim petition.

4. Before the Tribunal, on behalf of the claimant, P.W.1 to P.W.5 were examined and Ex.P1 to Ex.P15 were marked and on the side of the Respondents R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

5. On consideration of both oral and documentary evidence, the Tribunal fixed 80% liability on the part of the 3rd respondent and 20% on the part of the 4th respondent / appellant herein and awarded compensation as follows;-

<i>Sl.Nos.</i>	<i>Head</i>	<i>Compensation</i>
----------------	-------------	---------------------



C.M.A.No.4609 of 2019

1.	Loss of income	Rs.14,58,000/-
2.	Attender charges for 25 years	Rs.6,00,000/-
3.	Pain and suffering	Rs.3,00,000/-
4.	Loss of amenities	Rs.3,00,000/-
5.	Medical expenses	Rs.80,000/-
	Total	Rs.27,38,000/-

The said sum (80:20 ratio) was directed to be deposited by the 3rd respondent and 4th respondent / appellant herein with interest at the rate of 7.5 % per annum from the date of numbering of the petitioner till the deposit of compensation.

6. Learned counsel for the appellant / Insurance Company submitted that the Tribunal erred in fixing 20% negligence upon the driver of the van whereas the FIR reveals that the accident had taken place only due to the negligence of the driver of the lorry. Therefore, the Tribunal ought to have fix entire negligence upon the driver of the lorry. The Tribunal failed to see that in the claim petition the appellant had added only as formal party to the proceedings. The Tribunal erred in relying P.W.4, the Doctor and fixed the disability at 90% for both bone fractures in the legs. The Tribunal had failed



to see that the doctor who had examined before the Tribunal is not eh doctor who treated the claimant. The disability assessed by him is on the higher side. The Tribunal had wrongly adopted multiplier method in arriving the compensation under the head loss of earning power and disability whereas there was no evidence let in by the claimant to prove that he had lost the income what he has before accident. The Tribunal erred in awarding a huge sum under the head attender charges, pain and suffering and marital prospects, which is highly excessive. Hence, he prays for set aside the compensation awarded by the Tribunal.

7. The learned counsel for the 4th respondent also submitted that the compensation awarded by the Tribunal under various heads are excessive and the liability fixed by the Tribunal is unreasonable. Hence, he prays to fix the reasonable liability on the 4th respondent.

8. Heard the learned counsel appearing for the parties and perused the records.



WEB COPY

9. On the point of liability, based on the oral and documentary evidence, the Tribunal had come to the conclusion that the alleged accident occurred due to rash and negligent driving of the driver of the both vehicles and fixed 80% liability on the 4th respondent and 20% liability on the appellant to pay the compensation to the claim petitioner. On perusal of Ex.P1, First Information Report and Ex.R4, M.V report, it is clear that the Tribunal rightly come to the conclusion that the alleged accident occurred due to the negligent driving of the both driver of the vehicle and fixed the liability on both side and hence, this Court is not inclined to re-fix the liability and hence, the finding rendered by the Tribunal in this regard are hereby confirmed.

10. On the point of quantum, the Tribunal awarded Rs.14,58,000/- towards loss of income, which appears to be just and reasonable and the same is hereby confirmed. The Tribunal awarded Rs.6,00,000/- (2000x12x25) towards attender charges for 25 years, which appears to be higher side and hence, it has to be reduced to Rs.4,80,000/- (2000x12x20). The Tribunal awarded Rs.3,00,000/- towards pain and suffering and



C.M.A.No.4609 of 2019

Rs.3,00,000/- towards loss of amenities, which are on the higher side and hence, this Court is inclined to award Rs.2,50,000/- for pain and suffering and Rs.2,50,000/- for loss of amenities. The Tribunal awarded Rs.80,000/- towards medical expenses, which is just and reasonable and the same is hereby confirmed.

11. In the light of the said discussions, the modified award is as follows:

<i>Sl.Nos.</i>	<i>Head</i>	<i>Compensation</i>
1.	Loss of income	Rs.14,58,000/-
2.	Attender charges for 20 years	Rs.4,80,000/- (2000x12x20)
3.	Pain and suffering	Rs.2,50,000/-
4.	Loss of amenities	Rs.2,50,000/-
5.	Medical expenses	Rs.80,000/-
	Total	Rs.25,18,000/-

Accordingly, the amount awarded by the Tribunal is modified from Rs.27,38,000/- to Rs.25,18,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit as compensation.



C.M.A.No.4609 of 2019

12. The 4th respondent / Insurance Company is directed to deposit 80% of the modified award amount i.e., Rs.20,14,400/- and the appellant / Insurance Company is directed to deposit 20% of the modified amount i.e., Rs.5,03,600/-, less the amount already paid, if any together with interest at 7.5% per annum from the date of petition till date of deposit and costs to the credit of M.C.O.P.No.1341 of 2009 on the file of the Motor Vehicle Accident Claims Tribunal, Subordinate Court, Tiruppur, within a period of six(6) weeks from the date of receipt of a copy of this order.

13. On such deposit, the claim petitioner / 1st respondent, who has attained 18 years of age, is permitted to withdraw the modified award amount, on due application.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed.
No costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

Index:yes/no
Internet:yes/no
ata

To

8/9



C.M.A.No.4609 of 2019

The Motor Accident Claims Tribunal,
Subordinate Court,
Tiruppur.

A.A.NAKKIRAN.J.,

ata

C.M.A.No.4609 of 2019

26.06.2023