



C.M.A.No.4653 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.4653 of 2019

The Branch Manager,
United India Insurance Co. Ltd.,
Ulundurpet.

... Appellant

Vs.

1.Gopal
N.A.Hanifa Sahib (Deceased)
2.Waheed
3.Hakkim

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act against the judgment and decree dated 09.12.2004 made in MACT O.P.No.367 of 2002 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore.

For Appellants	:	Mr.M.J.Vijayaraaghavan
For Respondents	:	No appearance



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J U D G M E N T

This Civil Miscellaneous Appeal arises against the award passed by the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore, in MACT O.P.No.367 of 2002 dated 09.12.2004.

2. The Insurance Company is the appellant herein, preferred the above appeal challenging the award of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Cuddalore, in MACT O.P.No367 of 2002 on the ground of quantum.

3. The factum of the accident, manner of the accident, rash and negligent driving of the driver of the offending vehicle are not in dispute in this appeal and hence, the finding rendered by the Tribunal in this regard are hereby confirmed.

4. It is the case of the claim petitioner that on 01.04.2000 at about 06.00 hours, in Erumbur main road the vehicle bearing Regn.No.TN-45-Y-



9995 belonging to the 1st respondent insured with the 2nd respondent, driver by its driver, in a high speed, in a rash and negligent manner, dashed against the petitioner. Hence, the accident occurred, due to which, the petitioner sustained grievous injuries. Hence, the claim petition.

5. Before the Tribunal, on behalf of the claim petitioner, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P9 were marked and on the side of the Respondents R.W.1 was examined and Ex.R1 to R3 were marked.

6. On appreciation of materials before it, the Tribunal awarded compensation as follows:

(a) Loss of income	:	Rs.	9,000/-
(b) Pain and suffering	:	Rs.	10,000/-
(c) Extra nourishment	:	Rs.	2,000/-
(d) Attender charges	:	Rs.	3,000/-
(e) Permanent disability	:	Rs.	70,000/-
(f) Loss of earning capacity	:	Rs.	50,000/-
(g) Medical expenses	:	Rs.	183/-

			Rs. 1,44,183/-

The said sum was directed to be paid by the respondents 2, 3 and the appellant herein jointly or severally to the claim petitioner, along with



interest at 9% per annum from the date of petition till the date of realization.

Aggrieved against the same, the appellant / Insurance Company came out with the present appeal.

7. Learned counsel for the appellant / Insurance Company submitted that the Tribunal was not justified in awarding a huge compensation for the injuries namely fracture of 9th Rib by the 1st respondent in a road traffic accident. The Tribunal ought to have seen that the 1st respondent admittedly not suffered any schedule injury as contemplated under the provision of Part I and II of Schedule I of the Workmen Compensation Act, 1923. The 1st respondent sustained only fracture of 9th Rib, which cannot be construed as permanent disability. The Tribunal failed to appreciate the evidence of P.W.2 in respect of the percentage of disability assessed to the extent 35%, which is in any event without any basis. The Tribunal failed to consider that the 1st respondent failed to establish his age, avocation and income by producing valid and acceptable oral and documentary evidence and fixed the monthly income of the 1st respondent at the rate of Rs.3000/- per month, which is unreasonable. The Tribunal mechanically awarded Rs.50,000/-



towards loss of earning power, since the claim petitioner sustained fracture at 9th Rib and hence, the entire amount awarded under the said head is liable to be set aside. The compensation awarded by the Tribunal under other heads are also highly excessive and rate of interest of 9% per annum to the amount of Rs.1,44,183/- awarded from the date of filing claim petition by the claims Tribunal is also liable to be scaled down to 7.5% as per the ruling of the Apex Court reported in *AIR 2005 SC 2157*. In any event, the compensation awarded by the Tribunal in all is very excessive, exorbitant and arbitrary. Hence, the same is liable to be scaled down.

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

9. After going through the oral and documentary evidence, the Tribunal awarded Rs.70,000/- towards Permanent disability and this Court, on perusal of Ex.P7, the disability certificate issued by P.W.2 / the doctor, inclined to fix Rs.1000/- for per percentage for 35% disability. Accordingly, Rs.35,000/- is fixed for 35% disability. The Tribunal awarded Rs.50,000/-



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towards loss of earning capacity, since the petitioner sustained fracture on 9th rib in his chest and this Court is inclined to award Rs.25,000/- towards loss of earning capacity. The Tribunal awarded Rs.10,000/- towards pain and suffering which appears to be higher side and hence, it has to be reduced to Rs.5,000/- and the Tribunal awarded Rs.3,000/- towards attender charges which appears to be excessive and it has to be reduced to Rs.2,000/-. The Tribunal awarded Rs.2,000/- towards extra nourishment which is also excessive and hence, it has to be reduced to Rs.1000/-. The Tribunal awarded Rs.9,000/- towards loss of income and Rs.183/- towards medical expenses which appears to be just and reasonable and same are hereby confirmed. Insofar as the rate of interest fixed by the Tribunal is concerned, the Tribunal fixed interest at the rate of 9% per annum for the award amount from the date of filing the claim petition and as per decision rendered by the Hon'ble Apex Court reported in *AIR 2005 SC 2157*, this Court is inclined to fix the interest at 7.5% per annum for the award amount.

10. In the light of the above discussion, the modified award is as follows:



Sl.Nos.	Heads	Compensation
1.	Disability	Rs.35,000/-
2.	Loss of earning power	Rs.25,000/-
3.	Pain and suffering	Rs.5,000/-
4.	Loss of income	Rs.9,000/- (Rs.100x30=Rs.3000x3 months)
5.	Extra nourishment	Rs.1,000/-
6.	Attender charges	Rs.2,000/-
7.	Medical expenses	Rs.183/-
Total		Rs.77,183/-

Accordingly, the amount awarded by the Tribunal is modified from Rs.1,44,183/- to Rs.77,183/- together with interest at 7.5% per annum from the date of petition till the date of deposit of compensation.

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, modifying the compensation from Rs.1,44,183/- to Rs.77,183/- with 7.5% interest per annum to the extent indicated above. No Costs.

(ii) the Insurance Company is directed to deposit the modified award amount, with interest and costs before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, claimant is entitled to get the



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modified award amount. The claim Petitioner is permitted to withdraw the modified award amount with proportionate interest and costs, less the award amount already withdrawn, if any, by filing necessary application before the Tribunal.

(iv) the claim Petitioner is directed to pay the court fee, if any, for the modified compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

28.06.2023

Index:yes/no
Internet:yes/no
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To

The Principal Subordinate Judge,
Motor Accident Claims Tribunal,
Cuddalore.



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A.A.NAKKIRAN.J.,

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C.M.A.No.4653 of 2017

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