



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1102 of 2020

The United India Insurance Company Limited,
Branch Office at BO.2,
Trichy-23.
Tiruchirapalli-620 017.

... Appellant

Vs.

1.S.Mohanraj

2.K.Natrayan

3.N.Ponnuamy

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 28.11.2017 passed in M.C.O.P.No.255 of 2016 on the file of the Motor Accidents Claims Tribunal, (Special Subordinate Judge, Erode).

For Appellant : M/s.A.Dhiraviyanathan

For First Respondent : Mr.S.P.Yuvaraj



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal.

2. The Appeal arises out of an accident which occurred on 26.06.2016. While the claimant was traveling pillion in a Motor cycle bearing Reg. No.TN. 40 Z 4174, the rider of the first respondent's motor cycle, drove the motor cycle in a rash and negligent manner and hit the claimant's motor cycle. Due to impact, the claimant fell down and sustained multiple bone fractures on his face and other grievous injuries. The claimant therefore filed the claim petition, seeking a sum of Rs.5,00,000/- as compensation for the injuries suffered by him in the accident.

3. The first and second respondents the driver and owner of the motor cycle, remained absent and the claim petition was contested by the third respondent insurance company. The third respondent Insurance Company filed a counter denying all the allegations made in the claim



petition apart from questioning the liability, negligence and quantum of compensation claimed in the claim petition.

4. Before the Claims Tribunal, the claimant examined himself as P.W.1 and two Doctors were examined as P.W.2 and P.W.3., and Exs.P.1 to P.23 were marked in support of the claimant's case. On the respondent's side neither any witness was examined, nor any document was marked.

5. The Claims Tribunal on assessment of entire evidence on record, returned a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.4,84,500/- and mulcted the liability on the third respondent, insurance company. Aggrieved by the compensation awarded by the Claims Tribunal, the appellant Insurance Company has filed the above appeal challenging the quantum of compensation awarded by the claims Tribunal.

6. The learned counsel for the appellant submitted that there was duplication in the award of the compensation as far as disability was concerned.



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7. The learned counsel for the respondent on the other hand submitted that said duplication could be set off against the meagre amounts granted under other heads of compensation like loss of income, transportation expenses, extra nourishment etc.,

8. Heard the learned counsel appearing on either side and perused the entire materials placed on record.

9. As rightly contended by the learned counsel for the appellant the Tribunal has awarded a sum of Rs.60,000/- towards disability of 30% and further awarded a sum of Rs.2,65,200/- towards loss of earning by assessing the functional disability at 20%.

10. In my view, the Tribunal having adopted the multiplier method for assessing the loss of earning power arising out of the functional disability of 20% erred in awarding Rs. 60,000/- at Rs.3000 for 20% disability. Therefore, the award of the Tribunal towards disability at Rs.60,000/- is set aside and the award towards the other heads is confirmed. Accordingly, the award of the Tribunal is modified as follows.



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	6,500/-	6,500/-	Confirmed
2.	Transport Expenses	4,000/-	4,000/-	Confirmed
3.	Extra Nourishment	3,000/-	3,000/-	Confirmed
4.	Damages for Clothes and Articles	500/-	500/-	Confirmed
5.	Medical Expenses	1,05,300/-	1,05,300/-	Confirmed
6.	Pain and Sufferings	40,000/-	40,000/-	Confirmed
7.	Disability	60,000/-	-	Set Aside
8.	Loss of Earning Power	2,65,200/-	2,65,200/-	Confirmed
	Total	Rs.4,84,500/-	Rs.4,24,500 /-	Reduced by Rs.60,000/-

11. In fine, the respondent shall be entitled to a sum of Rs.4,24,500/- as compensation along with interest at the rate of 7.5% per annum. The appeal is therefore partly allowed. The Insurance company is directed to deposit the compensation of Rs.4,24,500/- within a period of four weeks from the date of receipt of copy of this order, less the amount, if any, already deposited. On such deposit the claimant shall be



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N.MALA, J.

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entitled to withdraw the sum by making proper application before the Tribunal. The Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

03.04.2023

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To

The Motor Accidents Claims Tribunal,
Special Sub Court, Erode.

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