



C.M.A.No.2516 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2516 of 2018
and C.M.P.No.19189 of 2018

The Divisional Manager,
United India Insurance Co.Ltd.,
Divisional Office,
13A, Nethaji Road,
Cuddalore-1

... Appellant/2nd Respondent

Vs

1.M.Palani @ Vanavarayan

... 1st Respondent/Petitioner

2.K.Venkatesan

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgment and Decree dated 30.04.2015 made in MCOP No.2882 of 2013 on the file of the Motor Accident Claims Tribunal, II Add.Subordinate Judge, Cuddalore.



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For Appellant
For Respondent

... M/s.C.Paranthaman
... No Appearance for R1 & R2

JUDGMENT

Aggrieved by the impugned award dated 30.04.2015 passed by the the Motor Accident Claims Tribunal, II Add.Subordinate Judge, Cuddalore made in MCOP No.2882 of 2013, the Appellant/Insurance Company has filed the the present appeal questioning the negligence as well as the quantum of compensation fixed by the Tribunal.

2. On 19.06.2013, when the claimant was riding the Hero Honda Passion Pro motorcycle bearing Reg.No.PY-01-BN-6734, the 2nd Respondent's Auto Rickshaw bearing Reg.No.TN-32-AA-9875 insured with the Appellant/Insurance Company, driven in rash and negligent manner, dashed against the claimant's motorcycle thereby the claimant sustained grievous injuries. Immediately after the accident, the claimant was admitted in the Government Medical College Hostipal, Mundiampakkam, Villupuram and thereafter, he was given treatment in the JIPMER Hospital, Pondicherry.



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Subsequently, the claimant filed a claim petition before the Motor Accident Claims Tribunal, II Add.Subordinate Judge, Cuddalore in MCOP No.2882 of 2013 claiming compensation of Rs.10,00,000/- for the injuries sustained by him.

3. Before the Tribunal, the claimant examined himself as P.W.1 and the Doctor was examined as P.W.2 and marked Ex.P.1 to Ex.P.11. No witnesses were examined nor any documents were marked on the side of the respondents. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.3,66,900/- in the claim petition and fastened the liability jointly and severally against the Appellant/Insurance Company as well as the 2nd respondent. Aggrieved by the said order dated 30.04.2015, the Appellant/Insurance Company has filed the present appeal.

4. Learned counsel appearing for the Appellant/Insurance Company submitted that though the First Information Report and Investigation Report,



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clearly states the said accident had occurred purely due to the negligence on the part of the claimant who drove the vehicle in a rash and negligent manner which was the cause for the accident for which, the criminal case has been registered against the claimant, the Tribunal without properly appreciating the evidence, has fastened the negligence against the 2nd respondent which is wholly unsustainable. Further, the compensation awarded by the Tribunal is also highly excessive which is liable to be interfered with. Accordingly, he prayed for allowing the appeal.

5. Though notice was served on the respondents 1 & 2 and their name printed in the causelist, none appeared on behalf of the respondents today. Considering the pendency of the Appeal which is of the year 2018, this Court is inclined to dispose of the same based on the materials available on record.

6. The factum of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. However, the Insurance Company had challenged the liability to pay on account of the negligence



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fixed on the 2nd respondent. After elaborately considering all the oral and documentary evidence, the Tribunal has passed an award based on the evidence of P.W.1.

7. It is the case of the Insurance Company that at the relevant point of time, the FIR was registered only against the claimant. In this backdrop, the FIR, Ex.P1 is pitted against the eye witness testimony of P.W.1. It is to be pointed out that it has been the consistent view of the Courts that FIR is may not and need not contain all the details. It is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case. Further FIR is not a substantive piece of evidence and it has to be substantiated by acceptable positive legal evidence. The FIR is only to set the criminal law in motion and no further. Merely because certain information is not mentioned or wrongly mentioned in the FIR cannot be a ground to doubt the statement of eye witnesses to the occurrence, when the said statements are found to be trustworthy. (*See Rohtash – Vs – State of Rajasthan (2006 (12) SCC 64 and Ranjit Singh & Ors. – Vs – State of Madhya Pradesh (JT 2010 (12) SC 167).*)



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The view expressed in the aforesaid decision has been reiterated by the Apex Court in *State of UP – Vs – Naresh & Ors. (2011 (4) SCC 324)*.

8. In the aforesaid backdrop, applying the ratio laid down in the aforesaid decision, when the evidence of P.W.1 is examined, it reveals that the 2nd respondent had driven the vehicle in a rash and negligent manner and to counter the evidence of P.W.1, except for the FIR no other material document or oral evidence has been placed by the insurance company or the 2nd respondent. In such a scenario, the Tribunal had rightly fixed the negligence on the 2nd respondent, as the person, who had caused the accident and, therefore, the finding on the said aspect does not required to be interfered with.

9. On the question of compensation, this Court has perused the impugned award passed by the Tribunal whereby the Tribunal had fixed the notional income at Rs.5,000/- and has awarded a sum of Rs.2,75,400/- (Rs.7500/- * 12= Rs. 90,000/- * 17% * 18) under the head Loss of earning capacity by adopting multiplier method. However, the Court is ordained with



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the task of finding out the injuries sustained by the claimant and the toll that the injuries would have on the day to-day functioning of the claimant and the earning that would be curtailed on the basis of the injuries sustained, which would be the basis to adopt multiplier method. A careful perusal of the injuries sustained by the claimant reveal that it would not have a lasting impact on the earning capacity of the claimant, so as to necessitate this Court to adopt multiplier method. Therefore, the adoption of multiplier method by the Tribunal is erroneous.

10. Further, coming to the compensation that could be awarded under the head Loss of earning capacity, on the basis of the deposition of the doctor, P.W.2, this Court is of the opinion that the functional disability could be safely fixed at 45% and accordingly, fixing a sum of Rs.3,500/- per percentage of disability, the compensation payable under the head Loss of Earning Capacity is arrived at Rs.1,57,500/- (45 * Rs.3,500/-).



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11. The Tribunal has awarded a sum of Rs.5,000/- towards Transport to hospital; Rs.5,000/- towards Special diet; Rs.10,000/- towards Loss of income during treatment period; Rs.27,500/- towards Pain and suffering; Rs.5,000/- towards Attender charges and Rs.5,000 towards Medical Expenses are just and reasonable. However, a sum of Rs.27,500/- awarded towards pain and sufferings is excessive and hence the same is reduced to a sum of Rs.25,000/-. Further, this Court feels that a sum of Rs.34,000/- under the head loss amenities is without any basis and therefore, the compensation under the said head cannot be granted and to that extent the compensation awarded under the said head stands deleted.

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under :-



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S.No	Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of earning capacity	Rs.2,75,400/-	Rs.1,57,500/- (45 * Rs.3,500/-)
2.	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
3.	Special Diet	Rs.5,000/-	Rs.5,000/-
4.	Loss of Income (2 months)	Rs.10,000/-	Rs.10,000/-
5.	Pain and sufferings	Rs.27,500/-	Rs.25,000/- (reduced)
6.	Attender charges	Rs.5,000/-	Rs.5,000/-
7.	Medical expenses	Rs.5,000/-	Rs.5,000/-
8.	Loss of amenities	Rs.34,000/-	-
	TOTAL	Rs.3,66,900/-	Rs.2,12,500/-

13. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified reducing the compensation amount from **Rs.3,66,900/-** to **Rs.2,12,500/-**. However, it is made clear that the appellant is not entitled for any interest amount. The Appellant-Insurance Company is directed to deposit the reduced amount to the credit of M.C.O.P.No.2882 of 2013 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 (6) weeks from the



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date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter. The Tribunal below shall disburse the compensation amount awarded by this Court. There shall be no order as to costs in the present appeal. Consequently, the connected miscellaneous petition is closed.

16.11.2023

Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal/II Additional Subordinate Judge
Cuddalore

2.The Section Officer,
V.R. Section,
High Court, Madras.



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M.DHANDAPANI, J

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