



CMA.No.800 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.800 of 2020

and

CMP.No.5078 of 2020

M/s. IFFCO-TOKIO General Insurance Co. Ltd.,
At JH Tower, 2nd Floor,
New No.24, Old No.302,
L.I.C. Colony Road, Salem,
C/o. The Manager-Claims,
IFFCO-TOKIO General Insurance Co. Ltd.,
No.128, Iffco Bhavan, 4th Floor,
Habibullah Road, T.Nagar,
Chennai – 600 017.

...Appellant

Vs.

1. Mallesh

2. K.Narenthiran

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree passed in M.C.O.P.No.230 of 2017 dated 28.04.2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.M.Sivakumar, for R1
: No Appearance, for R2



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed challenging the award and decree passed in M.C.O.P.No.230 of 2017 dated 28.04.2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

2. The case of the appellant is that, the 1st respondent/claimant filed a claim petition claiming a compensation of Rs.30,00,000/- on the ground that, on 04.04.2016 at about 9.45 pm., when the 1st respondent was proceeding from Nanjapuram to Kothagondapalli in Yamaha crux Motorcycle bearing Regn.No.TN-70-B-9808, the appellant insured Eicher goods vehicle bearing Regn.No.TN-32-A-3921 owned and driven by the 2nd respondent in a rash and negligent manner which came in the opposite direction, dashed against the motorcycle driven by the 1st respondent, as a result of which, the 1st respondent sustained grievous injuries all over his body, and thereby, he filed a claim petition claiming compensation. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.14,77,309/-. Aggrieved with the said order, the appellant has come up with this appeal questioning the liability of the insurer.



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3. Learned counsel for the appellant submitted that, the major grievance of the appellant/insurance company is that, due to the above said accident, though the 1st respondent sustained only a partial permanent disability of 50%, however, the tribunal adopted multiplier method and awarded a compensation of Rs.10,20,000/- under the head loss of earning power, as if the disability sustained by the 1st respondent is of functional in nature, which cannot be acceded to and the same has to necessarily be interfered with, as the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions. Further, the compensation awarded under other hands are also on the higher side which requires to be reduced. Learned counsel further submitted that, upon verification of the documents pertaining to the medical expenses alleged to have been incurred by the appellant, it was found that the original medical expenses incurred by the claimant is only to the tune of Rs.1,65,237/-, whereas the claimant obtained a compensation of Rs 3,02,309/- by making misrepresentation and the same has to be necessarily interfered with.

4. Per contra, the learned counsel appearing for the 1st respondent



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submitted that, the above said accident happened solely due to the rash and negligent driving of the owner cum driver of the Eicher goods vehicle, insured with the appellant and at the time of accident, the 1st respondent was aged about 28 years and was working as a painter and was earning a sum of Rs.18,000/- per month. Whiles, due to the injuries sustained by him in the above said accident, the claimant suffered from 50% permanent disability and the claimant being a painter by profession is unable to continue his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Thereby, after considering all the relevant documents placed before it, the tribunal had rightly come to the conclusion that the 1st respondent sustained functional disability and thereby adopted multiplier method for awarding compensation under the head Loss of earning power, which cannot be said to be erroneous and the same does not warrants interference of this Court. However he fairly submitted that there is repetition in medical bills and the original medical bills are only to the tune of Rs.1,65,237/- and only to that extent, this Court may modify the award of the tribunal.



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5. Heard learned counsel for the appellant as well as the 1st

respondent and perused the materials placed on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/insurer is with regard to the quantum of compensation awarded by the tribunal by adopting multiplier and more specifically the compensation awarded under the head Medical expenses.

7. Though it is claimed by the claimant that the accident is of the year 2016 and at the time of accident the claimant was aged about 28 years and was earning a sum of Rs.18,000/- per month by working as the painter and the disability sustained by the claimant is functional in nature and that the adoption of multiplier method instead of percentage method by the tribunal is perfectly in order, however, the said contention of the claimant cannot be accepted for the reasons that the extent of the disability would not really hamper the claimant from discharging his work. Therefore, the adoption of multiplier method by the Tribunal for awarding compensation under the head Loss of earning power has to be interfered with



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8. Further, considering the fact that the accident is of the year 2016

and also considering the age and the nature of injuries sustained by the 1st respondent, this Court deems it fit to fix a sum of Rs.5,000/- per percentage of disability. Therefore, the compensation awarded under the head loss of earning power stands modified to Rs.2,50,000/- ($5,000 \times 50 = 2,50,000/-$).

9. Insofar as the compensation awarded under the head medical expenses is concerned, a perusal of the Investigation report dated 21.01.2020 marked as Ex.A3 through the CMP.No.23139 of 2023 before this Court makes it clear that, the original medical bills pertains to only a sum of Rs.1,65,237/- and there is a repetition in the medical bills and the said fact was also not disputed by the learned counsel appearing for the claimant. Accordingly the compensation under the head medical expenses stands modified to Rs.1,65,237/-.

10. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.



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11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning power	10,20,000/-	2,50,000/- (reduced)
Medical expenses	3,02,309/-	1,65,237/- (reduced)
Future medical expenses	50,000/-	50,000/-
Transportation Charges	10,000/-	10,000/-
Nutrition Charges	10,000/-	10,000/-
Attender charges	10,000/-	10,000/-
Pain and sufferings	50,000/-	50,000/-
Discomfort, frustration and loss of social enjoyment	25,000/-	25,000/-
Total	Rs.14,77,309/-	Rs.5,70,237/-

12. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award of the Tribunal is modified by reducing the compensation amount from **Rs.14,77,309/-** to **Rs.5,70,237/-**. The appellant-insurance company is directed to deposit the above said amount awarded by this Court to the credit of M.C.O.P.No.230 of 2017 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,



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within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent/claimant through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance company, they are entitled to withdraw the same by way of filing necessary application. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

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(2/2)

skt

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

Copy to:

1. The Motor Accidents Claims Tribunal, Additional District Judge, Hosur.
2. The Section Officer,
VR Section, Madras High Court.



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M.DHANDAPANI., J.

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and

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C.M.P.No.23139 of 2023



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in
C.M.A.No.800 of 2020

M.DHANDAPANI, J.

This petition has been filed seeking to receive the Investigation Report dated 21.01.2020 of Sree Amma Associates Insurance Investigators along with enclosures therein as additional documentary evidence in the above appeal filed against the order passed in M.C.O.P.No.230 of 2017 dated 28.04.2018 on the file of the Motor Accidents Claims Tribunal, Additional District Judge, Hosur.

2. Heard the learned counsel for the petitioner.

3. Mr.M.Sivakumar, learned counsel for the 1st respondent has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is **ordered** and the additional document namely the Investigation Report dated 21.01.2020 of Sree Amma Associates Insurance Investigators along with enclosures therein is marked as Ex.A3.

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(1/2)

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M.DHANDAPANI, J.

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C.M.P.No.23139 of 2023
in
C.M.A.No.800 of 2020
(1/2)

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