



C.M.A.(MD).No.262 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.262 of 2023

and

C.M.P.(MD).No.3133 of 2023

The United India Insurance Company Limited,
3E, Balavinayagar Koil Street,
Thoothukudi.

... Appellant

Vs.

1.V.Selvaraj
2.Muthulingam

... Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, challenging the order passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thoothukudi in M.C.O.P.No.269 of 2017, dated 24.04.2019.

For Appellant : Mr.N.Dilip Kumar

For R1 : Mr.S.Sivathilakar

For R2 : Mr.B.Jameel Arasu



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J U D G M E N T

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Challenging the award passed by the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Thoothukudi in M.C.O.P.No.269 of 2017, dated 24.04.2019, the present appeal has been filed.

2. The brief facts leading to the filing of this appeal are as follows:

On 30.06.2017, at about 10.30 a.m., while the 1st respondent/claimant was riding his TVS XL Mopped bearing Registration No.TN 69 0895 in Osanuthu – Ottapidaram Main Road, the 2nd respondent drove the Car bearing Registration No.TN 72 BA 6572 in an opposite direction in a rash and negligent manner and dashed against the petitioner. As a result, the petitioner sustained injuries and fracture. Thereafter, he was admitted in the hospital and taken treatment from 30.06.2017 to 05.07.2017. Hence, he has filed a petition before the Motor Accident Claims Tribunal, claiming a sum of Rs.15,00,000/- as compensation. The respondents in the claim petition took a stand that it is only due to the rash and negligent driving of the Mopped by the claimant and the accident occurred while overtaking the lorry.

3. Before the Tribunal, on the side of the claimant, P.Ws.1 and 2 were examined and Exs.P1 to P15 were marked and on the side of the respondents,



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no evidence was marked.

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4. The learned counsel appearing for the appellant would submit that while overtaking the lorry, the first respondent dashed against the vehicle. Even in the evidence, he admitted the act. Despite the same, the Tribunal has fixed the liability on the part of the driver of the car. That apart, the Tribunal has applied multiplier for the simple fracture sustained in the hand. P.W.2, the Doctor said to have treated P.W.1 and he assessed the disability, as per the instruction of the claimant and he has not assessed the disability properly.

5. The learned counsel appearing for the first respondent would submit that he is ready to settle the matter and he is willing to receive a sum of Rs. 5,00,000/- and accordingly, this Court may modify the award.

6. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in fixing the compensation. The evidence of P.W.1 clearly indicate that while overtaking the lorry, he hit against the car, which is coming from the opposite direction, that itself clearly indicate that the liability cannot be fixed on the vehicle driver. Be that as it may, the learned counsel for the first respondent submitted before this Court that he will



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ready to receive a sum of Rs.5,00,000/- as compensation.

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7. This Court is of the view that the Tribunal has adopted the multiplier method without any basis. The injury sustained by the first respondent is only a fracture and he was also discharged from the hospital and even his evidence also clearly indicate that he is able to walk normally and there is no permanent disability. The medical science is advanced in many ways and the person with the rod fixed inside the body is able to do the work and unless and until the first respondent establishes that he is totally immobilised the multiplier method cannot be applied automatically. The Tribunal, without applying the mind casually adopted the multiplier '14' to the monthly income and besides, the Tribunal has also awarded a sum of Rs.2,00,000/- towards the disability. The Tribunal has fixed the compensation mechanically, instead of awarding a just compensation.

8. In such a view of the matter, the entire award passed by the Tribunal is set aside and considering the disability assessed, this Court is inclined to grant a sum of Rs.2,40,000/-. That apart, this Court awarded a sum of Rs.24,000/- towards loss of income during the treatment and another Rs.25,000/- awarded towards transportation and extra nourishment and awarded Rs.1,00,000/-



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towards pain and suffering also sustained and other aspect is set aside. If that amount is calculated, the total amount comes around Rs.3,89,000/-. However, considering the other aspect, the respondent fairly admitted to receive a sum of Rs.5,00,000/-. The compensation is restricted to Rs.5,00,000/-. The Insurance Company is agreed to pay that amount. In such a view of the matter, the first respondent is entitled to a sum of Rs.5,00,000/- as full quit. The Insurance Company has already deposited 50% of the award amount. The first respondent is entitled to receive a sum of Rs.5,00,000/- with accrued interest alone and the remaining amount would be paid to the Insurance Company.

9. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

20.04.2023

akv

To

The Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Thoothukudi.



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N.SATHISH KUMAR,J.

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