BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

CMA(MD) No.484 of 2021 and
CMP(MD) No.4274 of 2021

IFFCO Tokio General Insurance Company Ltd.,
Through its Manager
Door No.82 Preetham Plaza First Floor
Chandragandi Nagar, Ponmeni
Madurai Town ...appellant/ respondent No.2

Vs.

1.Nagarathinam ... Respondent / petitioner

2.Shanmugam ... Respondent No.2/ respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 09.12.2020 in MCOP No.58 of 2017 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Paramakudi.

For Appellant : Mr.V.Sakthivel

For Respondents : Mr.D.Senthil for R1

No appearance for R2

JUDGMENT

(Judgment of the Court was delivered by RMT.TEEKAA RAMAN, J.)

This civil miscellaneous appeal is directed against the judgment and decree dated 09.12.2020 made in MCOP No.58 of 2017 on the file of the Motor Accident Claims Tribunal, Subrdinate Judge, Paramakudi.

2. The case of the claimant before the Tribunal in nutshell is as follows:

On 09.06.2016, in an accident that had occurred, the first respondent/claimant sustained grievous injury. It is his case that the accident had taken place due to the rash and negligent driving of the driver of the 2nd respondent vehicle bearing Registration No.TN65D 8916, insured with the appellant herein, wherein, it hit the motorcycle bearing Registration No.TN65AA 3301 driven by the claimant, as a result of which, the claimant sustained grievous injury. Pursuant to the injury sustained, he was taken treatment in the Ramanathapuram Government Hospital and subsequently at Vikram Hospital, Madurai between 09.06.2016 and 08.07.2016 and at the Christian Medical College

Hospital, Vellore, for a period of seven days. Pursuant to the said accident, the claimant has suffered 86% disability. Hence, he claimed a compensation at Rs.30,00,000/-.

3. Before the Tribunal, on the side of the claimant, the claimant examined himself as P.W.1 and marked Ex.P1 to Ex.P19 and on the side of the insurance company, the driver of the offending vehicle was examined as R.W.1 and Dr.Kaliraj, who treated the claimant at the Vikram Hospital, Madurai, was examined as R.W.2. The medical Board attached to the Government Rajaji Hospital, on assessing the disability of the claimant, has issued the wound certificate Ex.P18 thereby fixing the disability as a permanent disability to the extent of 86%. On considering the oral and documentary evidence, the Tribunal came to the conclusion that the accident had happened due to the rash and negligent driving of the driver of the 2nd respondent and accordingly, held that both the owner of the vehicle and the insurance company are jointly and severally liable to pay the compensation. The Tribunal, by fixing the disability at 86% and applying the principles of Rajkumar's case [(2011) 1 SCC 343], held that since there is a functional disability, applying multiplier method,

fixed the notional income at Rs.10,000/- and awarded compensation at Rs.27,50,451/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by the compensation awarded by the Tribunal, the appellant insurance company is before this Court with this appeal.

4. The learned counsel for the appellant insurance company would contend that the insurance company is challenging the award on the point of negligence as well as quantum. It is submitted that as per the Employees Compensation Act, the disability assessed will be 80% against the disability assessed as 86%.

5. The learned counsel for the first respondent/claimant submitted that on considering the oral and documentary evidence adduced on both sides and considering the functional disability assessed by the Government Rajaji Hospital at 86%, the tribunal has rightly come to the conclusion and awarded the just and fair compensation and hence, no interference is warranted to the award passed by the tribunal. Therefore, he seeks for the dismissal of this appeal.

6. We have given our anxious consideration to the rival submissions made by the learned counsel for the appellant and also perused the materials available on record.

7. On perusal of the evidence adduced before the trial Court, we found that the claimant, who is the injured, has examined himself as P.W.1 and also marked Ex.P1 – the First Information Report. Exs.P.4 and P.5 are the motor vehicle report for both the vehicles. Ex.P6 is the charge sheet. The fact remains that the appellant insurance company has called the driver of the offending vehicle and was examined as R.W.1. In his cross examination, pursuant to the charge sheet filed before the learned Magistrate, he has admitted the guilt and paid the fine and proceeded to offer an explanation that since there was pressure upon him, he paid the fine. Having considered the evidence adduced by R.W.1, the Tribunal has rightly come to the conclusion that the accident had taken place due to the rash and negligent driving of R.W.1, namely, the driver of the second respondent herein.

8. It is pertinent to note that due to the pressure exerted by the

police upon R.W.1, he has admitted his guilt before the trial Court. On going through the oral evidence of P.W.1 coupled with Ex.P1 – FIR, Ex.P2 - rough sketch and also Ex.P6-charge sheet and also the admission on the part of R.W.1, we find that the explanation offered by R.W.1 in the witness box is only a sweeping statement to save his skin and hence, there is no irregularity and infirmity in the finding rendered by the Tribunal as to the negligence on the part of the driver of the second respondent. Accordingly, the finding rendered by the tribunal on the aspect of negligence is hereby confirmed.

9. Now, coming to the quantum of compensation, we find that Rs.10,000/- was fixed towards notional income and future prospects at the rate of 40% equivalent is Rs.4,000/- is just and proper and multiplier adopted and the deduction made are proper. Taking into consideration Ex.P18-disability certificate, the Tribunal has fixed the permanent disability at 86%. Our attention is drawn to the Schedule attached to the Employees Compensation Act, wherein, with regard to similar nature of injury, disability at 80% has been fixed. After going through the medical records as reflected in Ex.P3 and also Ex.P18, we find that the disability

suffered by the first respondent/claimant is fixed at 80% and in respect of all other aspects, the finding of the Tribunal is just and proper. Accordingly, the notional income is fixed at Rs.10,000/-, 40% future prospects, multiplier 12 has to be adopted. Hence, the pecuniary loss said to have been suffered by the claimant is reassessed at Rs.20,16,000/- (14,000*80/00*12*15) and the compensation for pain and sufferings, for treatment and on other heads granted by the tribunal is confirmed. Accordingly, the award of Rs.27,50,451/- is reduced to Rs.25,99,251/- (Rupees twenty five lakhs ninety nine thousand two hundred and fifty one only).

10. Accordingly, the award amount granted by the tribunal is reassessed as follows:

Heads	**Awarded by the tribunal (Rs.)**	**Modified/ reduced**	**Final Compensation (Rs.)**
Loss of income	21,67,200	(Reduced)	20,16,000
Medical expenses	5,25,251	(Confirmed)	5,25,251
For nutrition	10,000	(Confirmed)	10,000
Attendant charges	8,000	(Confirmed)	8,000
Pain and sufferings	30,000	(Confirmed)	30,000

For transport expenses	10,000	(Confirmed)	10,000
Total	27,50,451		25,99,251

11. In the result, the civil miscellaneous appeal is allowed in part. The appellant insurance company is directed to deposit the entire modified amount, after deducting the amount already deposited, if any, with interest at 7.5% per annum from the date of petition till the date of deposit, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the entire award amount with proportionate interest and costs. The appellant insurance company is permitted to withdraw the balance amount, if any. No costs. Consequently connected Miscellaneous Petition is closed.

(T.K.R.,J.) (P.B.B.,J.)
08.11.2023

NCC : Yes/No
Internet : Yes/No
RR
To

1.The Motor Accident Claims Tribunal,
Subordinate Judge, Paramakudi

2.The Section Officer,

V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI, J.

RR

CMA(MD) No.484 of 2021

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