



C.M.A.(MD)No.464 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.464 of 2022

T.Prabhu

...Appellant/Petitioner

Vs.

1.A.Paramasivam

2.The General Manager,

United India Insurance Company Limited.,

Ground Floor, United India Complex,

Aurubindo Road, Block-19,

Neyveli, Cuddalore-607 803.

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside or modify the judgment and decree dated 21.12.2021 passed in M.C.O.P.No.81 of 2019 on the file for the Motor Accident Claims Tribunal Cum Chief Judicial Magistrate, Theni and allow the appeal with costs.

For Appellant : Mr.S.Vikram

For R2 : Mr.C.Karthik



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JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation awarded by the Tribunal.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)the injured claimant was proceeding in his auto bearing Registration No.TN-60-S-3849 on 11.03.2018 at about 03.00 p.m., along with some passengers. At the time, the offending vehicle bearing Registration No.TN-07-AR-7328 came in an opposite direction dashed against the auto and as a result, the claimant sustained multiple grievous injuries all over his body. The passengers of the auto had also sustained injuries.



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(ii)The first respondent before the Tribunal took a stand that at the time of accident, the claimant was only rash and negligent in driving the auto.

(iii)The Insurance Company before the Tribunal admitting the accident took a stand that the claimant allowed excessive passengers in his auto, which resulted in the accident.

4. Before the Tribunal, on the side of the claimant, the claimant himself was examined as P.W.1 and Ex.P1 to Ex.P8 were marked. On the side of the respondent R.W.1 was examined and Ex.R1 was marked. Ex.C1 was also marked.

5.The tribunal on appreciation of entire evidence available on record and also the disability certificate marked as Ex.C1, found that the driver of the car/first respondent was rash and negligence in driving awarded the compensation as indicated below:



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S.No.	Description	Amount
1.	Permanent Disability	Rs.3,00,000/-
2.	Pain and suffering	Rs. 60,000/-
3.	Nutritious charges	Rs. 20,000/-
4.	Loss of income	Rs. 48,000/-
	Total	Rs.4,28,000/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the claimant.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.The learned counsel for the appellant mainly contended that the disability certificate clearly shows that the claimant had suffered 60% permanent disability and his total hip had been immobilised. There would be no movement. This aspect was not taken into consideration by the Tribunal. Though sufficient evidence was available in the records, the Tribunal had simply rejected the claim of the claimant on the ground that



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no proper evidence had been adduced by the claimant to substantiate the said fact. Further, the Tribunal had not adopted multiplier method.

8.The learned counsel for the respondent would submit that the accident was occurred mainly due to the excessive passengers in the auto. Therefore, contributory negligence has to be fixed on the part of the claimant.

9.In view of the above submission, now the point arises for consideration in this appeal is:

(1) Whether the compensation awarded by the Tribunal is proper?

10.Admittedly, the accident and the Insurance are not disputed by both sides. Though in the copy of the Accident Register, it was mentioned that the claimant had sustained only fracture in his right Tibia, it is relevant to note that mere entry in the AR copy cannot be a determinative factor. At the time of admission in the causality, the entries reflected in the AR copy cannot be a conclusive. Sometimes, the nature



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of injuries sustained by the parties will be missed in the AR copies. But the fact remains that he was admitted in the Government Medical College Hospital at the time of accident. Thereafter, total hip replacement surgery was conducted on 14.09.2018 and he was discharged on 22.09.2018. This had been clearly noted by a team of Doctors, while assessing disability. Therefore, merely because the AR copy did not contain this particular, it cannot be stated that the claimant had not sustained any injuries at the time of accident.

11.The Tribunal having considered the disability certificate, the nature of injuries, his continuous treatment and the surgery underwent by him, had awarded only Rs.8,000/- as monthly income. The claimant was a auto driver by profession.

12.Taking note of the total immobilization, replacement of hip, the functional disability and also considering the disability certificate under Ex.C1, this Court fixes the monthly income of the injured claimant at Rs.9,000/- (Rupees Nine Thousand only) per month. In the case of injuries, there would be no deduction towards personal expenses. Hence,



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the deduction made by the Tribunal is hereby set aside. Further, considering the age of the claimant at the time of accident, this Court fixes 17 as multiplier as per the dictum laid down in the ***National Insurance Company Ltd., vs. Pranay Sethi and Others*** [CDJ 2017 SC page 1220]. In the result, the claimant is entitled to the compensation as stated below:

S.No.	Description	Amount
1.	Loss of income (9,000*12*17*60/100)	Rs.11,01,600/-
2.	Pain and suffering	Rs. 60,000/-
3.	Nutritious charges	Rs. 20,000/-
	Total	Rs.11,81,600/-

13.In fine, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced as stated above.

14.The second respondent/Insurance Company is directed to deposit the compensation amount as modified by this Court i.e., Rs.11,81,600/- (Rupees Eleven Lakhs Eighty One Thousand Six Hundred



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only) with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.81 of 2019, on the file of the Motor Accident Claims Tribunal /Chief Judicial Magistrate, Theni within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

30.03.2023

NCC : Yes/Nos
Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate, Theni.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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