



C.M.A(MD)No.301 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.301 of 2017

The Branch Manager,
National Insurance Company Ltd.,
West Masi Street,
Madurai.

... Appellant/3rd Respondent

Vs.

1.Sivakumar

... Respondent/Petitioner

2.Sikkandahar Ali

3.Asok Kumar

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award passed made in M.C.O.P.No. 271 of 2011, dated 11.01.2016 on the file of the Morot Accident Claims Tribunal and Principal Subordinate Judge, Tenkasi.

For Appellant : Mr.N.S.Ramakrishna Dass

For R1 : Mr.R.J.Karthick

For R2&R3 : No Appearance



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JUDGMENT

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The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Tenkasi in M.C.O.P.No.271 of 2011 on the ground of negligence and quantum.

2. According to the injured claimant, he was travelling in a two wheeler on 21.06.2011 at about 09.30 p.m near Lakshmi Mill four way road at Palladam. He was travelling in the east-west direction and he had stopped his vehicle and waiting for crossing the road towards right side. At that point of time, Tata Indica car driven by the 1st respondent and owned by the 2nd respondent and insured with the 3rd respondent had come in the same direction and dashed against the claimant's vehicle. He was thrown away and he sustained injuries in the said accident. The claimant had sought for a compensation of Rs.10,00,000/-

3. The driver and owner of the vehicle had remained ex parte and the insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving of the petitioner himself and the petitioner was not holding any driving license at the relevant point of time. They have also questioned the quantum. The



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insurance company had filed an additional counter relying upon a final report submitted by the police authorities.

4. The tribunal after considering the oral and documentary evidence arrived at a finding that neither the driver nor the owner of the Tata Indica car have chosen to examine themselves. Therefore, the version of P.W.1, namely the injured claimant was accepted and the tribunal arrived at a finding that the accident has happened only due to the rash and negligent driving of the 1st respondent in the claim petition. A disability certificate was issued to the claimant under Exhibit P.12. As per the said disability certificate, he has sustained disability to an extent of 50%. However, the tribunal has taken only 40% as the disability and awarded Rs.80,000/-. Further, a sum of Rs.30,000/- was awarded towards pain and suffering, a sum of Rs.10,000/- was awarded towards extra nourishment, a sum of Rs.30,000/- was awarded towards medical expenses based on Exhibits P.7, P.8, P.10 and P.11. A sum of Rs.10,000/- was awarded towards transport charges and a sum of Rs.50,000/- has been awarded towards loss of amenities. This award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant,

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the accident has happened only due to the rash and negligent driving on



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the part of the injured claimant and therefore, the liability ought not to have been fixed upon the driver of the Tata Indica car. According to the learned counsel appearing for the appellant, the injured claimant has not explained the manner of accident. He further contended that though the F.I.R was originally registered as against the driver of the Tata Indica car, later, under Exhibit R.2, final report was filed indicating that it was closed as mistake of fact. Therefore, it is clear that the accident has happened only due to the rash and negligent driving on the part of the injured claimant. He further contended that a sum of Rs.50,000/- ought not to have been awarded towards loss of amenities when there is no pleading or medical evidence to the said effect. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the respondent had contended that when the claimant have let in independent evidence before the tribunal, the F.I.R or the charge sheet cannot be looked into for the purpose of deciding liability or quantum of compensation. He further contended that there is a compression fracture in L1 of the vertebra and therefore, the tribunal was right in awarding a sum of Rs.50,000/- towards loss of amenities. Hence, he prayed for confirming the award passed by the tribunal.



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7. I have carefully considered the submissions made on either side and perused the records.

8. Though the appellant insurance company has contended that the accident has happened only due to the rash and negligent driving on the part of the injured claimant, neither the driver nor the owner of the offending vehicle have chosen to examine themselves before the tribunal to establish the negligence on the part of the injured claimant. The injured claimant has examined himself as P.W.1 and in his evidence, he has categorically submitted that while he was waiting to take right turn, the Tata Indica car coming from behind had dashed against the rear side of the two wheeler and has caused the accident. This version of injured claimant stands uncontroverted. Therefore, this Court has no hesitation in arriving at a conclusion that the accident has happened only due to the rash and negligent driving on the part of the 1st respondent in the claim petition.

9. As far as the quantum of the award is concerned, the tribunal has reduced the percentage of disability from 50% to 40% and has awarded a sum of Rs.2,000/- for each percentage. Totally, a sum of Rs.

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80,000/- was awarded under the head of disability which this Court does



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not find it to be unreasonable. As far as the other conventional heads, like pain and suffering, extra nourishment, medical bills and transport are concerned, this Court does not consider it to be excessive. However, the learned counsel appearing for the appellant had contended that a sum of Rs.50,000/- has been awarded towards loss of amenities. The doctor who has been examined as P.W.2, has pointed out that there is a compression fracture in L1 of the vertebra. He further deposed that it will be difficult for the injured claimant to stand or bend or to drive the vehicle. Therefore, it is clear that the claimant has suffered loss of amenities. However, a sum of Rs.50,000/- is on the excessive side and this Court feels that only a sum of Rs.25,000/- could be awarded under the head of loss of amenities. Perusal of the records indicate that the injured claimant has been an in-patient in the hospital for 11 days. However, no amount has been awarded by the tribunal towards attender charges. Therefore, this Court finds that a sum of Rs.7,000/- could be awarded as attender charges.

10. In view of the above said deliberations, the award of the tribunal is modified under the following heads:

Permanent disability	: Rs.80,000/-
Pain and suffering	: Rs.30,000/-
Extra nourishment	: Rs.10,000/-



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Medical bills	: Rs.30,000/-
Transport charges	: Rs.10,000/-
Attender charges	: Rs. 7,000/-
Loss of amenities	: Rs.25,000/-

Total	: Rs.1,92,000/-

The quantum of the award is reduced from Rs.2,10,000/- to Rs. 1,92,000/-. The award amount will carry an interest at the rate of 7.5% from the date of claim petition.

11. With the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

24.04.2023

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

1.The Morot Accident Claims Tribunal
and Principal Subordinate Judge,
Tenkasi.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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