



C.M.A. (MD)No.474 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.09.2023

Pronounced on : 24.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.474 of 2020

and

C.M.P.(MD)No.5275 of 2020

Divisional Manager,
M/s.National Insurance Co. Ltd.,
No.3, North Veli Street,
Madurai District.

... Appellant/
2nd Respondent

Vs.

1. A.Muthukumar

... 1st Respondent/
Petitioner

2. S.Ibramsha

... 2nd Respondent/
Respondent No.1

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Madurai,



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made in M.C.O.P.No.631 of 2014 dated 16.11.2017 and allow this appeal with costs.

For Appellant : Mr.R.Rajamani
For R1 : Mr.A.Anbalakan
For R2 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.631 of 2014 dated 16.11.2017 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.5,75,315/- (Rupees Five Lakhs Seventy Five Thousand Three Hundred and Fifteen only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 05.11.2013, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The case of the claimant is that on 05.11.2013 at about 05.00 p.m., while the claimant was proceeding towards his home in his TVS XL bearing Registration No.TN-58-AB-3523 after purchasing vegetables for his business from Central Market near Vilankudi, Kovil Pappakudi Railway Gate in Madurai – Dindigul main road, one two wheeler Passion Pro bearing Registration No.TN-64-F-1786, which came from the opposite direction with uncontrollable speed and rash and negligent manner, dashed against the claimant and as a result of which, the claimant sustained head injury and other multiple injuries all over his body, that the claimant was immediately taken to Vadamalayan Hospital, Madurai for treatment and that the accident was occurred only due to the rash and negligent riding of the Passion Pro two wheeler rider.

4. It is the further case of the claimant that he was aged 35 years at the time of accident, that he was hale and healthy and that he was running a grocery and fancy store at V.Karisalkulam, Madurai and was earning Rs.20,000/- per month.



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5. The defence of the second respondent is that the claimant has also contributed to the accident by his negligence and that therefore, the claimant is not entitled to get compensation.

6. During trial, the claimant has examined himself as P.W.1 and examined the Record Officer attached to Vadamalayan Hospital, Madurai as P.W.2 and exhibited 8 documents as Ex.P.1 to Ex.P.8 and one witness document as Ex.X.1. The first respondent had remained *ex parte*. The second respondent has adduced neither oral nor documentary evidence.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned order dated 16.11.2017 holding that the accident was occurred only due to the rash and negligent riding of the Passion Pro two wheeler rider, mulcted liability on the second respondent and directed them to pay compensation of Rs.5,75,315/- with interest and costs. Aggrieved by the impugned award, the second respondent has preferred the present appeal.



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8. The points that arise for consideration are :

- 1) *Whether the Tribunal erred in mulcting entire liability on the second respondent, despite showing that the claimant by his negligence has also contributed to the accident?*
- 2) *Whether the quantum of compensation arrived at by the Tribunal is just and proper and is in accordance with law?*

Points 1 and 2:

9. It is not in dispute that on the basis of the complaint lodged by the claimant's wife, FIR came to be registered against the Passion Pro two wheeler rider under Ex.P.1 and wherein, it has been stated that the Passion Pro two wheeler rider Kadhar Ali has driven the two wheeler in a rash and negligent manner and dashed against the claimant's two wheeler and caused the accident.

10. The claimant as P.W.1 in his evidence would reiterate contentions raised in the claim petition with regard to the mode of accident. Though P.W.1 was cross-examined by the second respondent's side, his evidence with regard to the mode of accident was not at all shaken during his cross-examination and nothing was elicited by the second respondent's side in their favour.



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11. Though the second respondent has alleged that the claimant has also contributed to the accident by his own negligence and the Passion Pro two wheeler rider alone was not at fault, they have not chosen to examine the Passion Pro two wheeler rider or any other witnesses, who had witnessed the occurrence. As already pointed out, the first respondent/ owner of the offending vehicle had remained *ex parte*. The second respondent has not adduced any contra evidence with regard to the mode of accident. Considering the above, the finding of the Tribunal that the accident was occurred only due to the rash and negligent riding of the Passion Pro two wheeler rider cannot be found fault with.

12. As already pointed out, since the offending vehicle was owned by the first respondent and the said vehicle was insured with the second respondent and also the fact that the insurance policy was in force on the date of accident, the Tribunal has rightly mulcted liability on the second respondent. The second respondent has not shown any other valid reason or ground to impugn the said finding of the Tribunal.

13. Now turning to the quantum of compensation, it is evident from the medical records that the claimant has suffered the following injuries;



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1. Right eye contusion and supra orbital oedema
2. Sutured lacerated wound over the right parietal region
3. Abrasion right Zygoma, right frontal region
4. Lacerated wound left ear pinnae
5. Abrasion left shoulder joint and fingers
6. Abrasion right knee joint
7. Cut injury 2 x 1 cm over the medial aspect of right foot
8. Abrasion posterior aspect of right thigh

14. It is not in dispute that immediately after the accident, the claimant was taken to Government Rajaji Hospital, Madurai and after first aid treatment, he was admitted in Vadamalayan Hospital, Madurai on 05.11.2013 and was discharged on 02.12.2013. The Medical Board attached to Government Rajaji Hospital, Madurai on examining the claimant has issued the disability certificate certifying that the claimant has suffered partial permanent disability at 53%. Considering the nature of the injuries and the disability suffered, the Tribunal has rightly applied the percentage method and granted disability compensation at Rs.1,59,000/- (53 x Rs.3,000/-).



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15. The Tribunal, taking note of the medical bill under Ex.P.7, has rightly awarded Rs.71,315/- towards medical expenses. Considering the nature of the injuries, period of inpatient treatment, disability suffered and other attending circumstances, awarding of Rs.27,000/- for loss of income during the treatment period, Rs.75,000/- for pain and suffering, Rs.40,000/- for extra nourishment, Rs.18,000/- for attendant charges, Rs.5,000/- for transport expenses and Rs.5,000/- for loss of cloth and articles by the Tribunal are very much reasonable and the same cannot said to be excessive.

16. The Tribunal, for the injuries suffered by the claimant in his eye, ear, shoulder and head and the mental agony suffered by him, has granted Rs.1,75,000/- towards future loss of income. As rightly contended by the learned counsel appearing for the second respondent, there is absolutely no basis for awarding Rs.1,75,000/- after fixing the disability compensation applying the percentage method. Hence, the awarding of Rs.1,75,000/- towards future loss of income cannot be sustained. Considering the above, the claimant is entitled to get total compensation of Rs.4,00,315/- (Rupees Four Lakhs Three Hundred and Fifteen only).



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17. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above points are answered accordingly.

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,75,315/- (Rupees Five Lakhs Seventy Five Thousand Three Hundred and Fifteen only) is hereby reduced to **Rs.4,00,315/- (Rupees Four Lakhs Three Hundred and Fifteen only)** together with interest at 7.5% per annum and costs. The appellant/insurer is directed to deposit the modified award amount with interest and costs from the date of petition till realization to the credit of M.C.O.P.No.631 of 2014 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai, after deducting the amount already deposited if any, within a period of four 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 said amount together with interest and costs. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. Parties are



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directed to bear their own costs. Consequently, connected Miscellaneous
Petition is closed.

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24.11.2023

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

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.474 of 2020
and
C.M.P.(MD)No.5275 of 2020

Dated : 24.11.2023