



C.M.A.No.244 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.244 of 2021
and C.M.P.No.1552 of 2021**

The Branch Manager,
M/s.National Insurance Company Limited,
Nos.808, 809, Kailash,
No.26, Kasturba Gandhi Marg,
New Delhi-110 001.

C/o.The Divisional Manager,
M/s.National Insurance Company Limited,
Divisional Office,
No.9, Infantry Road,
Near Alankar Theatre,
Vellore-632 002.

... Appellant

Vs.

1.Arun

2.M/s.North South Logistics Services,
Behind Shanidev Mandir,



C.M.A.No.244 of 2021

Opposite Maruthi Gate No.2,
Old Delhi, Gurgaon Road,
Gurgaon, Haryana-122 001.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.01.2020 passed in M.C.O.P.No.446 of 2018 by the Motor Accident Claims Tribunal (In the Court of Additional District Judge), Hosur.

For Appellant : Mr.J.Michael Visuvasam

For Respondents : Mr.M.Sivakumar
for R1
Mr.K.Srinivasan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the judgment and decree dated 30.01.2020 passed in M.C.O.P.No.446 of 2018 by the Motor Accident Claims Tribunal, Additional District Court, Hosur.



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2. The facts of the case are that on 11.11.2016, when the claimant was proceeding from Andhivadi to Attibele along with his father and mother in a Scooter bearing Reg.No.KA 51 EB 2194 which was driven by his father on Kothagondapalli – Attibel Road, Opposite TVS Company Gate, one Nagaraj accompanied by pillion rider Narasimhaiah came from opposite direction in a Motorcycle without registration number. During that time, the driver of Eicher Heavy Goods Vehicle bearing Reg.No.HR 55 Y 5002 belonging to the first respondent and insured with the second respondent came in a opposite direction in a rash and negligent manner and dashed against the motorcycle driven by Nagaraj and motorcycle driven by Nagaraj dashed against the first respondent's Scooter and both the vehicles fell down. Thereby, the first respondent sustained injuries and filed claim petition before the Tribunal and the Tribunal has awarded a sum of Rs.4,41,406/- together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of realization excluding the default period if any and directed the appellant/Insurance Company to pay the



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compensation to the first respondent. Challenging the same, this Civil Miscellaneous Appeal has been filed.

3. The learned counsel appearing for the appellant submits that admittedly, the First Information Report was registered against the first respondent/claimant's father as well as the driver of the vehicle insured with the appellant, since the primary cause of the accident was the father of the first respondent, who had hit against the Motorcycle driven by Nagarajan, who was coming in the opposite direction and the father of the first respondent was carrying two persons as pillion riders in the Scooter which is against the Motor Vehicle Rules, however, no liability was fastened against the first respondent/claimant's father. In respect of quantum of compensation, the Tribunal has awarded a sum of Rs.4,41,406/- for the simple injury sustained by the first respondent, which is excessive.



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4. Per contra, the learned counsel appearing for the first respondent submits that merely registration of FIR against the first respondent's father is not sufficient to hold that the first respondent's father was responsible for the accident. The first respondent is an eye-witness and he was examined as P.W.1 to prove the manner in which the accident occurred. However, no eye-witness was examined by the appellant/Insurance Company and thereby, the Tribunal fastened the liability against the appellant/Insurance Company and fixed the compensation which is perfectly in order. Accordingly, he prays for dismissal of this appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent and the learned counsel appearing for the second respondent.



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6. It is seen from the records that Ex.P1/FIR was registered against the first respondent's father and the driver of the appellant's insured vehicle and the appellant/Insurance Company has not examined any eye-witness to disprove the case of the first respondent. The first respondent examined himself as P.W.1 who was the eye-witness and narrated the entire facts before the Tribunal and based on the same, the Tribunal fastened the liability against the appellant. In the absence of any contra evidence to dispute the testimony of P.W.1, mere registration of FIR against the father of the 1st respondent would not suffice to hold that the accident had been caused by the 1st respondent's father. Therefore, the findings recorded by the Tribunal does not require any interference.

7. In respect of quantum of compensation, the Tribunal relying on the judgment of the Hon'ble Supreme Court of India in the case of ***Master Mallikarjun vs. The Divisional Manager, National Insurance Company Limited and another*** reported in ***2013 (2) TNMAC 338 (SC)***, awarded a compensation of Rs.4,00,000/-, however, the said decision would be



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applicable only if the injured is a child below the age of 12 years. In the present case, at the time of accident, the first respondent was young adult and the age of the first respondent was 17 years and therefore, the said judgment is not applicable to the present case. As per Ex.P11/Disability Certificate, the first respondent sustained 50% of disability. Hence, this Court is inclined to award compensation by adopting the percentage method. Accordingly, this Court fixes Rs.5,000/- per percentage of disability by adopting the disability at 50% and arrives at the compensation of Rs.2,50,000/-. The first respondent has taken treatment in the hospital for few days, hence, a sum of Rs.50,000/- is awarded towards pain and sufferings. Since the Tribunal has not awarded any compensation towards attender charges, extra nourishment and transportation, this Court is inclined to award a sum of Rs.10,000/-, Rs.20,000/- and Rs.10,000/- towards attender charges, extra nourishment and transportation. A sum of Rs.11,406/- awarded under the head medical and incidental expenses is hereby confirmed.



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8. A sum of Rs.25,000/- awarded under the head of discomfort, inconvenience and loss of earnings and Rs.5,000/- awarded under the head future medical expenses, are not based on any proper materials. Therefore, the same is liable to be set aside.

9. Accordingly, the award dated 30.01.2020 passed in M.C.O.P.No.446 of 2018 is modified as follows:-

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Disability	2,50,000/-
2.	Pain and Suffering	50,000/-
3.	Attender Charges	10,000/-
4.	Extra Nourishment	20,000/-
5.	Transportation	10,000/-
6.	Medical Bills	11,406/-
	Total	3,51,406/-



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10. In the result, this Civil Miscellaneous Appeal is partly allowed and the appellant/Insurance Company is directed to deposit the compensation of Rs.3,51,406/-, as awarded by this Court along with interest at 7.5% p.a. from the date of claim petition till the date of deposit, less the amount, if any already deposited, to the credit of MCOP No.446 of 2018 on the file of the Motor Accident Claims Tribunal, Additional District Court, Hosur, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the deposited amount directly to the bank account of the 1st respondent through RTGS within a period of two weeks thereafter. There shall be no order as to costs in this appeal. Connected miscellaneous petition is closed.

26.11.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accident Claims Tribunal,
Additional District Court, Hosur.
2. The Section Officer,
V.R. Section,
High Court,
Chennai.



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M.DHANDAPANI, J.

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