



Civil Miscellaneous Appeal No.2775 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.2775 of 2021

and

C.M.P.No.15849 of 2021

The Branch Manager,
Reliance General Insurance Co. Ltd.,
No.408, 3rd Floor,
Perundurai Road,
Erode - 638 011.

... Appellant

Vs.

1.Sreedhar
S/o.Velusamy

2.S.Ravi
S/o.Senkottaiyan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.07.2015 made in M.C.O.P.No.863 of 2012 on the file of Motor Accident Claims Tribunal, Additional Sub Court, Tiruppur.

For Appellant : Mr.K.Moorthy

For Respondents : Mr.Ma.P.Thangavel [R1]
Mr.T.Ganesan [R2]



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JUDGMENT

The appellant Insurance Company, aggrieved by the award passed by the Motor Accident Claims Tribunal, Additional Sub Court, Tiruppur, in M.C.O.P.No.863 of 2012, dated 27.07.2015, has filed this appeal.

2. The first respondent is the claimant. The case of the claimant is that on 07.05.2012 at about 11.00 a.m., when he was riding his two wheeler in N.H.47 Main Road, Perumanallur, Tirupur, a car belonging to the second respondent, which was coming from the opposite direction, was driven by its driver in a rash and negligent manner and dashed against the two wheeler ridden by the first respondent, due to which, the first respondent/claimant sustained grievous injuries. The first respondent/claimant was a mineral water distributor and was earning a sum of Rs.10,000/- p.m. Due to the injuries sustained by him, the first respondent/claimant was unable to continue his avocation. It is under these circumstances, the first respondent/claimant has filed the claim petition before the Tribunal seeking for compensation.



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3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the car. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.7,86,600/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of income	6,63,000/-
2.	Medical bills	43,600/-
3.	Pain and sufferings	30,000/-
4.	Mental agony	30,000/-
5.	Transportation	10,000/-
6.	Nutrition	10,000/-
	Total	7,86,600/-

The Tribunal directed the above compensation to be paid by the appellant/Insurance Company with interest at the rate of 7.5% p.a.

4. Questioning the quantum of compensation awarded by the Tribunal as well as negligence, the appellant Insurance Company has filed the present appeal.



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5. The learned counsel appearing for the appellant/Insurance Company submitted that though the FIR in Crime No.956 of 2012 was registered against the driver of the car insured with the appellant/Insurance Company, indeed the first respondent/claimant has driven his two wheeler in a rash and negligent manner and dashed against the car insured with the appellant/Insurance Company. However, the said fact was not properly adjudicated by the Tribunal and the Tribunal has erroneously fixed the entire liability against the appellant/Insurance Company. Further, the disability of the first respondent was not assessed by the Medical Board and it was assessed by a private doctor and the first respondent / claimant has not sustained functional disability, however, the Tribunal has erroneously adopted the multiplier method and has also taken the disability of the first respondent / claimant as 50%. According to them, the nature of injuries sustained by the first respondent / claimant does not legally entitle him to get compensation based on the multiplier method. Further, the Tribunal went wrong in finding that the first respondent/claimant was suffering from disability of 50%. He further submitted that if the claimant



establishes that he has suffered with permanent disability and he is not able to continue his avocation even after the accident by way of oral or documentary evidence, then the Court can adopt the multiplier method for permanent disability and the compensation awarded under the other heads is also on the higher side. Hence, he prays for allowing this appeal.

6. The learned counsel appearing for the first respondent submits that the first respondent/claimant was a mineral water distributor and was earning a sum of Rs.10,000/- at the time of accident and due to the injuries sustained by him, the first respondent/claimant was unable to continue his avocation and he sustained functional disability. Considering the injuries sustained by the first respondent, the Tribunal has applied the multiplier method and fixed the monthly income of Rs.6,500/- and the compensation awarded under the other heads is also on the lower side. Hence, he prays for dismissal of this appeal.

7. 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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8. The first respondent/claimant claimed that on 07.05.2012 at about 11.00 a.m., when he was riding his two wheeler in N.H.47 Main Road, Perumanallur, Tirupur, a Car belonging to the second respondent, which was coming from the opposite direction, was driven by its driver in a rash and negligent manner and dashed against the two wheeler driven by the first respondent, due to which, the first respondent/claimant sustained grievous injuries. In order to prove the accident, the first respondent marked Ex.P1/FIR and apart from that, P.W.2 was examined. However, no independent witness was examined and no contra evidence was marked by the appellant/Insurance Company to disprove the case of the first respondent/claimant and therefore, the Tribunal fastened the liability against the appellant/Insurance Company which is perfectly in order.

9. In respect of quantum of compensation, P.W.3, who is a private Doctor, assessed the disability of the first respondent/claimant as 55% based on the injuries sustained by him on the various parts of his body and it is not a functional disability and only partial disability. The only



dispute raised by the appellant/Insurance Company is that the nature of injuries sustained by the first respondent/claimant does not entitle him to get the compensation for the loss of income by adopting the multiplier method. Though the Doctor assessed the disability of the first respondent / claimant at 55%, the Tribunal had taken the disability at 50%. However, this Court is inclined to fix the disability of the claimant at 55% as per Ex.P5 assessed by P.W.3-Doctor. Further, the Tribunal has erroneously adopted the multiplier method for the purpose of assessing the loss of income of the first respondent / claimant as he has not suffered with any permanent disability. The Tribunal ought to have fixed the loss of income of the first respondent / claimant on percentage basis, but instead has adopted the multiplier method, which is not correct.

10. The accident happened on 07.05.2012. This Court is of the considered view that it will be a just compensation, if the loss of income of the first respondent / claimant is calculated at Rs.3,000/- per percentage of disability. This Court, therefore, accepts the disability assessed by the Doctor before the Tribunal at 55% but it can only be treated as a partial and permanent disability and not as



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permanent disability. Therefore, the loss of income fixed by the Tribunal under the impugned award to the first respondent / claimant is reduced to Rs.1,65,000/-, calculating for 55% disability at Rs.3,000/- per percentage of disability.

11. In view of the above facts and circumstances, this Court is of the considered view that there is no ground for interference with regard to the compensation awarded by the Tribunal under various heads viz., Rs.43,600/- towards medical expenses; Rs.30,000/- towards pain and sufferings; Rs.10,000/- towards transportation; The compensation awarded under the head 'mental agony' is not warranted in this case and hence, the same is set aside. However, a sum of Rs.10,000/- is awarded under the head 'attender charges'. The compensation awarded under the head 'Nutrition Food' is on the lower side and the same is enhanced to Rs.30,000/-. Considering the nature of injuries sustained by the first respondent/claimant, he would not have continued his work for a period of three months. Hence, a sum of Rs.30,000/- is awarded under the head 'loss of income during the treatment period'.



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12. For the foregoing reasons, the award of the Tribunal is hereby reduced in the following manner :

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
1	Loss of income	Rs.6,63,000/-	Rs.1,65,000/-
2	Medical Bills	Rs.43,600/-	Rs.43,600/-
3	Pain and Sufferings	Rs.30,000/-	Rs.30,000/-
4	Mental Agony	Rs.30,000/-	-
5	Transportation	Rs.10,000/-	Rs.10,000/-
6	Nutrition Food	Rs.10,000/-	Rs.30,000/-
7	Attender Charges	-	Rs.10,000/-
8	Loss of income during the treatment period	-	Rs.30,000/-
	Total Awarded	Rs.7,86,600/-	Rs.3,18,600/-

13. In the result, the Civil Miscellaneous Appeal stands partly allowed by reducing the compensation from Rs.7,86,600/- to Rs.3,18,600/-, as indicated above. The appellant / Insurance Company is directed to deposit the entire award amount (reduced amount) as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.863 of 2012 on the file of the



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Motor Accident Claims Tribunal, Additional Sub Court, Tiruppur, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent / claimant, through RTGS, within a period of two weeks thereafter. It is made clear that the appellant / Insurance Company is permitted to withdraw the excess award amount, if any deposited by them before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

02.12.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

ssb

To

The Motor Accident Claims Tribunal,
Additional Sub Court, Tiruppur.



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M.DHANDAPANI, J

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