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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

**CMA.No.1612 of 2020
in C.M.P No.11851 of 2020**

The Manager
The New India Assurance Co Ltd.,
Having office at No.113-A, G.S.T.Road,
Chengalpattu

... Appellant /
3rd respondent

-VS-

1. Govindarajan

..1st respondent/
petitioner

2. Vishnu Deep Projects and Properties P Ltd.,
No.31A Jawaharlal Nehru Street,
Eakkattu Thangal, Chennai 600 097

..2nd respondent /
1st respondent

3. N.Murali

..3rd respondent /
2nd respondent

PRAYER: Civil Miscellaneous Petition has been filed under Section 173 of the Motor Vehicles Act, 1988 to set-aside the decree and judgement dated 07.12.2018 in M.C.O.P No.87 of 2017 on the file of Motor Accident Claims Tribunal (Special Sub Court – II), Thiruvallur.

For Appellant : Mr.S.Dhakshinamoorthy

For Respondent : Ms.Reshma

Legal Aid Counsel for R1

JUDGMENT

The appellant insurance company, aggrieved by the quantum of

<https://www.mhco.org.in/index.php> compensation in M.C.O.P No.87 of 2017 on the file of Motor Accident Claims



Tribunal (Special Sub Court – II), Thiruvallur dated 07.12.2018.

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2. The 1st respondent / claimant filed a claim petition on the ground that on 15.05.2016 at about 06.30 P.M. When he was riding his motor cycle bearing Reg. No.TN 04 J 3415 proceeding from Maraimalai Nagar to Kavoore Church while he was riding his vehicle, a XYLO car bearing Reg. No.TN 09 BA 4959 driven by its driver in a rash and negligent manner and dashed against the motor cycle, due to the accident, the first respondent sustained grievous injuries. It is under these circumstances, the claim petition came to be filed before this Court seeking for payment of compensation.

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 XYLO car. Having rendered such a finding, the total compensation was fixed at Rs.14,27,735/- under various heads.

4. The Insurance company aggrieved by the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court.



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5. The learned counsel for the appellant insurance company submitted that the Tribunal has adopted multiplier method without ascertaining whether there was any functional disability due to the said injury and awarded a sum of Rs.2,80,000/- towards disability, which is too high. The medical board assessed disability at 80% for the fracture in the leg and for head injury, since as per the treatment records, the claimant sustained only a fracture in the leg and that there was no record of injury in the head. A compensation awarded by the Tribunal under loss of earning capacity for a sum of Rs.8,16,480/- which is also excessive. Hence, this Court may set aside the award by allowing the appeal.

6. The learned counsel for the first respondent submitted that after considering all the witnesses and documentary evidence, the Tribunal has awarded compensation which is just and reasonable and the same does not warrant any interference.

7. Heard the learned counsel for the appellant and the first respondent and perused the materials available on record.

8. The factum of the case are not in dispute. The insurance company has preferred the appeal questioning the quantum arrived at by the Tribunal.



9. On perusal of the wound certificate and discharge summary, the first respondent sustained "**fracture femur -Right leg grade-3**"

The medical board assessed the disability at 80% as partial permanent disability. The Tribunal has adopted the multiplier method on the ground that the claimant has suffered partial permanent disability.

10. As per the decision of the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar*, the claimant has to prove, after the accident he could not continue his employment and in the absence of his disability, there is no question of applying the multiplier method and only the per percentage method has to be adopted.

11. The accident had taken place in the year 2016 and therefore, this Court is inclined to fix Rs.6,000/- per percentage since the claimant has not mentioned his employment and the compensation under the head of disability is fixed at Rs.4,80,000/- (80% x Rs.6000). The Tribunal has awarded a sum of Rs.8,16,480/- towards loss of earning capacity and Rs.10,000/- towards loss of amenities, which is unwarranted. Further, the Tribunal has awarded meager amount in respect of transportation, extra nourishment, pain and sufferings and attender charges, which has to be modified.



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12. In the light of the above discussion, this Court modifies the compensation in the following manner:

Compensation awarded under the head	Compensation awarded by the Tribunal (in Rs.)	Compensation awarded by this Court (in Rs.)
Disability	2,80,000	4,80,000
Loss of earning power	8,16,480	
Medical bills	2,76,255	2,77,000
Transportation	3,000	20,000
Extra nourishment	3,000	30,000
Damage to clothes	1,000	1,000
Pain and sufferings	35,000	75,000
Attendar charges	3,000	20,000
Loss of amenities	10,000	
Total	14,27,735	9,03,000

13. The compensation awarded by the Tribunal at Rs.14,27,735/- is reduced to Rs.9,03,000/-. It was brought to the notice of this that the compensation amount has already been deposited by the appellant insurance company. The first respondent will be entitled to withdraw the compensation amount fixed by this Court along with interest. Any excess amount lying after the withdrawal, shall be permitted to be withdrawn by the appellant herein.

M.DHANDAPANI,J

14. In the result, the Civil Miscellaneous Appeal is partly allowed. No

<https://www.mhc.tn.gov.in/judis>



costs. Consequently, connected miscellaneous petition is closed.

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To

The Motor Accident Claims Tribunal (Special Sub Court – II), Thiruvallur.

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