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CMA.No.529 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.529 of 2021

and

CMP.No.3376 of 2021

M/s. National Insurance Company Ltd.,
The Manager,
Anuradha Complex, 3rd Floor,
Opp. Raja Theatre, Bangalore Road,
Krishnagiri – 635 001 .

...Appellant

Vs.

1. Rajesh

2. K.Saravanan

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, as against the award dated 04.10.2019 made in MCOP.No.775 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri.

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.M.Sivakumar, for R1
: No Appearance, for R2



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JUDGMENT

Challenging the award dated 04.10.2019 passed in MCOP.No.775 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Krishnagiri, the appellant-insurer has come up with this appeal.

2. It is the case of the 1st respondent/claimant that, on 06.09.2013 at about 08.35 hours, when he and his friend one Hariharan were proceeding in a TVS Star City motorcycle bearing Regn.No.TN-70-D-3881, near Kaveripattinam TNHB Bus stop, at that time, a Hero Honda Splender bike bearing Regn.No.TN-24-D-9361 owned by the 2nd respondent insured with the appellant insurance company driven by its driver came in the opposite direction in a rash and negligent manner and dashed against the vehicle driven by the 1st respondent, due to the impact, the 1st respondent/claimant sustained multiple injuries and got admitted in the hospital. Thereby, the 1st respondent/claimant filed a claim petition claiming a compensation of Rs.10,00,000/-. Before the tribunal, the 1st respondent/claimant examined himself as P.W.1 and marked exhibits P.1 to P.7 and on the side of the appellant/insurance company, one witness



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viz., R.W.1 was examined and exhibits R.1 & R.2 were marked and the Disability certificate was marked as Court document Ex.C.1. After trial, the tribunal arrived at a conclusion that the accident had happened solely due to the rash and negligent driving on the part of the driver of the appellant insured vehicle and awarded a sum of Rs.2,39,200/- towards compensation in favour of the 1st respondent/claimant payable by the appellant-insurer. Challenging the same, the appellant has come up with this appeal.

3. Learned counsel for the appellant-insurance company submitted that, the accident is of the year 2013, however, the tribunal had awarded a sum of Rs.1,50,000/- under the head pain and suffering which is highly excessive and the compensation awarded by the tribunal under the other heads are also on the higher side and the same has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that, by considering all the relevant documents, the Tribunal passed the present impugned award, holding that the accident



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happened solely due to the rash and negligent driving on the part of the driver of the appellant-insured vehicle which cannot be said to be erroneous. Further, the compensation awarded by the tribunal under the various heads are already on the lower side and the same does not require further reduction. Accordingly, he prayed for dismissal of the appeal.

5. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Though very many grounds have been raised, the major grievance of the learned counsel for the appellant-insurance company is that the compensation awarded by the tribunal under various heads are excessive and disproportionate and the same is not as per the settled ratio in a catena of decisions.

7. In this context, this Court perused the materials available on record particularly the impugned award and this Court is satisfied that the compensation of Rs.1,50,000/- and Rs.5,000/- awarded by the



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tribunal towards Pain and suffering and Damages to clothes respectively is excessive and not in accordance with the ratio laid down by the Apex Court in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in *2017 (16) Supreme Court Cases 680*, and thereby, this Court is inclined to reduce the same to Rs.50,000/- and Rs.1,000/- respectively.

8. At the same time, a sum of Rs.5,000/- each has been awarded under the heads Transport charges, Attender charges and Extra nourishment which are on the lower side and therefore, this Court is inclined to enhance the same to Rs.10,000/- each under the said heads respectively. Further, a sum of Rs.6,000/- has been awarded towards which is on the lower side and thereby, the same is enhanced to Rs.10,000/-.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Medical Expenses	18,200/-	18,200/-
Transport charges	5,000/-	10,000/-
Attender charges	5,000/-	10,000/-
Extra nourishment	5,000/-	10,000/-
Damages to clothes	5,000/-	1,000/-
Pain and sufferings	1,50,000/-	50,000/-
Disability 15%	45,000/-	45,000/-
Loss of income during treatment period	6,000/-	10,000/-
Total	2,39,200/-	1,54,200/-

10. Accordingly, this Civil Miscellaneous appeal stands allowed in part and the impugned award of the Tribunal is modified by reducing the compensation amount from **Rs.2,39,200/-** to **Rs.1,54,200/-**. The appellant /Insurance Company is directed to deposit the said amount to the credit of MCOP.No.775 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of



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this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the 1st respondent /claimant through RTGS within a period of two (2) weeks thereafter. If any excess amount is deposited by the appellant/insurance company, it is at liberty to withdraw the same by way of filing necessary application. There shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is closed.

03.12.2024

skt

NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No

To:

The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court,
Krishnagiri.



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M.DHANDAPANI, J.

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