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Civil Miscellaneous Appeal No.1362 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.1362 of 2020

and

C.M.P.No.9939 of 2020

Tata AIG General Insurance Co. Ltd.,
No.72, 1st Floor, May Flower Castle,
Dr.Balasundaram Road,
P.N.Palayam, Coimbatore - 641 018.

... Appellant

Vs.

1.S.Dhanapal
S/o.Sivalingam

2.S.Udhayakumar
S/o.S.Shanmugam

3.S.Udhayakumar
S/o.S.Shanmugam

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.10.2019 made in M.C.O.P.No.643 of 2017 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Coimbatore.

For Appellant : Mr.K.Vinod

For Respondents : Mr.C.Thangaraju [R1]
No appearance for R2 and R3



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J U D G M E N T

The appellant insurance company, aggrieved by the award passed by the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore, in M.C.O.P.No.643 of 2017, dated 25.10.2019, has filed this appeal.

2. The first respondent is the claimant. The case of the claimant is that on 28.11.2016 at about 04.45 p.m., when he was riding his two wheeler in Aanaimalai TD pazhani road, a Car, which was coming from the opposite direction, was driven in a rash and negligent manner and dashed the two wheeler ridden by the first respondent, due to which the first respondent/claimant sustained grievous injuries. The first respondent/claimant was an agriculturist 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 second respondent. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.17,79,000/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Future loss of earning capacity	7,25,760/-
2.	Medical bills	1,46,057/-
3.	Pain and sufferings	5,00,000/-
4.	Loss of amenities	1,00,000/-
5.	Transportation to hospital	10,000/-
6.	Extra nourishment	10,000/-
7.	Damage to clothing and articles	5,000/-
	Total	14,96,817/-

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.



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

5. The learned counsel appearing for the appellant/Insurance Company submits that the accident occurred due to the head on collusion between the motorcycle and the car and however, the Tribunal went wrong on holding that the accident occurred due to rash and negligent driving of the car and fixed liability against the appellant/Insurance Company. The compensation awarded by the Tribunal is very excessive. Hence, he prays for allowing this appeal.

6. The learned counsel appearing for the first respondent submits that the compensation awarded by the Tribunal is just and reasonable and does not require any interference by this Court. Hence, he prays for dismissal of this appeal.



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7. Heard the learned counsel for appellant insurance company and learned counsel for first respondent/claimant.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. On a perusal of the impugned award, this Court is able to find that admittedly, while the first respondent/claimant was driving his two wheeler, the offending vehicle driven by the second respondent came in a opposite direction in a rash and negligent manner and dashed against the first respondent/claimant's vehicle with an over speed. This was corroborated by P.W.1/injured claimant himself. In support of his oral evidence, FIR was marked as Ex.P1. The charge sheet filed against the second respondent was marked as Ex.P2. There was no contra evidence adduced by the appellant/Insurance Company as to the manner in which the accident took place. This Court is satisfied with the findings arrived at by the Tribunal with regard to the negligence and accordingly, the said finding is not interfered with in this judgment.



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10. In respect of quantum of compensation, the Tribunal has fixed the disability of the first respondent/claimant at 30% for computing the future loss of earning power and adopted the multiplier '16' and fixed the notional income at Rs.12,600/- and awarded a sum of Rs.7,25,760/- under the head future loss of earning power, however, the injuries sustained by the claimant were forehead injuries, left femur fracture and eyebrow and multiple injuries all over the body and no documentary evidence was filed before the Tribunal to prove the income of the injured claimant and the nature of injuries sustained by the claimant is not serious requiring hospitalization for months together and there is no document filed by the claimant, namely, discharge summary etc., stating the period of hospitalization and therefore, this Court is inclined to safely conclude that the loss of income due to the injuries sustained by the claimant would be for about five months. Therefore, due to non-availability of any documentary evidence proving the income of the claimant, this Court fixes the monthly income at Rs.10,000/- and the loss of income is fixed at Rs.50,000/- (Rs.10,000/- * 5). Therefore, the amount of Rs.7,25,760/- granted by the Tribunal towards future loss of earning capacity is hereby declined. However, considering the nature of



injuries sustained by the claimant, a sum of Rs.1,00,000/- is awarded under the head medical disability. The medical bills were filed and therefore, a sum of Rs.1,46,057/- awarded towards medical bills is hereby confirmed. For the nature of injuries sustained by the claimant, the amount awarded at Rs.5,00,000/- towards pain and sufferings is extremely on the higher side and therefore, the same is reduced to Rs.75,000/-. A sum of Rs.1,00,000/- awarded under the head loss of amenities is also not applicable in the present case. A sum of Rs.10,000/- awarded towards transportation to hospital is confirmed. For extra-nourishment, the amount awarded by the Tribunal at Rs.10,000/- is enhanced to Rs.20,000/-, whereas, a sum of Rs.5,000/- awarded towards damages to clothes is reduced to Rs.1,000/-. In addition, a sum of Rs.10,000/- is awarded by this Court towards attender charges. Accordingly, the modified compensation is as follows:-

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Future Loss of earning capacity	Rs.7,25,760/-	-
2.	Medical Bills	Rs.1,46,057/-	Rs.1,46,057/-



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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
3.	Pain and Sufferings	Rs.5,00,000/-	Rs.75,000/-
4.	Loss of amenities	Rs.1,00,000/-	-
5.	Medical Disability	-	Rs.1,00,000/-
6.	Transportation to Hospital	Rs.10,000/-	Rs.10,000/-
7.	Extra Nourishment	Rs.10,000/-	Rs.20,000/-
8.	Damage to clothing and articles	Rs.5,000/-	Rs.1,000/-
9.	Loss of income	-	Rs.50,000/-
10.	Attender Charges	-	Rs.10,000/-
	Total	Rs.14,96,817/-	Rs.4,12,057/-

11. The compensation awarded by the Tribunal at Rs.14,96,817/- is reduced to Rs.4,12,057/-. The appellant insurance company is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



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12. In the result, the Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Special Subordinate Judge, Coimbatore.



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M.DHANDAPANI, J

ssb

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