



C.M.A.No.1663 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1663 of 2018

And

C.M.P.No.13090 of 2018

Divisional Manager
National Insurance Company Limited
No.165, Nethaji Road,
Manjakuppam,
Cuddalore.

... Appellant

Vs.

1.K.Ramaraj
2.M.Muthuraj

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 18.11.2015 made in M.C.O.P.No.2244 of 2014, on the file of the Motor Accidents Claims Tribunal (Special Sub Court), Cuddalore.

For Appellant : Mr.D.Bhaskaran
For Respondents : Mrs.Ramya V.Rao for R1
R2 – No Appearance

J U D G M E N T

The second respondent before the Motor Accidents Claims



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Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 18.11.2015 passed by the Motor Accidents Claims Tribunal (Special Sub Court), Cuddalore, in M.C.O.P.No.2244 of 2014.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.5 Lakhs alleging that on 26.01.2014 at about 9.30 p.m., the first respondent travelled as pillion rider in the motorcycle bearing Registration No.TN-31-AJ-3739 from East to West direction at Mudapalli – Muthandikuppam Road, at Kaattukoodalur the driver of the vehicle drove the vehicle in a rash and negligent manner and hit against another motorcycle bearing Registration No.TN-31-AC-2269, due to which, the first respondent sustained injuries. After adjudication, the Tribunal awarded a sum of Rs.6,39,200/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition till the date of realisation and directed the appellant to deposit the amount along with interest and to recover the same from the second respondent.



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3.The learned counsel appearing for the appellant further submitted that aggrieved by the fastening of liability on the appellant and the quantum of compensation awarded by the Tribunal, this appeal has been filed. The learned counsel further submitted that though the first respondent / claimant claim that he travelled as pillion rider, investigation report reveals that the motorcycle was driven by the claimant and hence, the accident occurred due to the rash and negligent driving of the claimant and hence, fastening liability on the Insurance Company is not sustainable one. The learned counsel further submitted that P.W.2 who assessed the disability of the claimant is not an expert in ophthalmology and hence the disability assessed at 35% disability is onerous and the Tribunal awarded compensation by adopting multiplier method as though the claimant suffered functional disability, which is not sustainable one and further submitted that the amount awarded under the other heads are also on the higher side.

4.The learned counsel appearing for the first respondent submitted that the first respondent/ claimant travelled as a pillion rider in the motorcycle bearing Registration No.TN-31-AJ-3739 belonging to the second respondent and insured with the appellant. The accident



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occurred due to the rash and negligent driving of the rider of the motorcycle belonging to the second respondent and insured with the appellant and the law enforcing agency registered case as against the vehicle insured with the appellant. The learned counsel further submitted that the Tribunal after considering all the factual aspects, awarded compensation which is just and reasonable and warrants no interference and further submitted that the Tribunal rightly directed the appellant to deposit the award amount and to recover the same from the second respondent.

5. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

6. The claimant/ first respondent in the claim petition claim that on 26.01.2014 at about 9.30 p.m., the first respondent travelled as pillion rider in the motorcycle bearing Registration No.TN-31-AJ-3739 from East to West direction at Mudapalli – Muthandikuppam Road, at Kaattukoodalur the driver of the vehicle drove the vehicle in a rash and negligent manner and hit against another motorcycle bearing Registration No.TN-31-AC-2269, due to which, the first respondent



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sustained injuries.

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7.The appellant claims that investigation report reveals that the motorcycle was driven by the claimant and hence, the accident occurred due to the rash and negligent driving of the claimant and hence, fastening liability on the Insurance Company is not sustainable one.

8.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.5,29,200/- for disability, Rs.25,000/- for medical expenses, Rs.10,000/- for transport expenses, Rs.10,000/- for extra nourishment, Rs.15,000/- for pain and sufferings, Rs.25,000/- for discomfort, Rs.25,000/- for future treatment and arrived at a total compensation of Rs.6,39,200/- with interest at the rate of 7.5%p.a. from the date of petition till the date of realization.

9.This Court perused the F.I.R. marked as Ex.P.1, which was registered and it has been registered against the driver of the vehicle insured with the appellant. Further the Tribunal has directed the appellant to deposit the award amount and to recover the same from the second respondent. Hence, this Court is not inclined to interfere



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with the liability aspect.

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10.Insofar as the quantum of compensation is concerned, the Tribunal ought to have followed the decision of the Hon'ble Apex Court reported in *(2011) 1 SCC 343 [Raj Kumar Vs. Ajay Kumar and Ors.]*, however, without following the guidelines issued in the said decision, the Tribunal mechanically passed the award by applying multiplier method, which is not sustainable one.

11.In the present case, the disability has been assessed by independent Medical Officer and not by the Medical Board. The Doctor has assessed the disability of the injured claimant as 35% disability. At the relevant point of time Rs.4,000/- per percentage of disability was awarded. Hence, amount awarded for disability works out to Rs.1,40,000/- [35% X Rs.4,000/- = Rs.1,40,000/-].

12.The amount awarded under the head pain and sufferings, extra nourishment in the opinion of this Court is low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded for pain and sufferings is enhanced to Rs.50,000/- from Rs.15,000/-, the amount awarded for extra



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nourishment is enhanced to Rs.20,000/- from Rs.10,000/-. The amount awarded under the head transport expenses in the opinion of this Court is just and reasonable and the same is confirmed. This Court is of the opinion that some amount has to be awarded for loss of income during treatment period and for attender charges. Accordingly, a sum of Rs.60,000/- is awarded for loss of income during treatment period and a sum of Rs.10,000/- for attender charges. The amount awarded under the other heads, in the opinion of this Court is not necessary and the same are deleted.

13.Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Disability	Rs.5,29,200/-	Rs.1,40,000/-
2.	Extra nourishment	Rs. 10,000/-	Rs. 20,000/-
3.	Transport expenses	Rs. 10,000/-	Rs. 10,000/-
4.	Discomfort	Rs. 25,000/-	---
5.	Pain and sufferings	Rs. 15,000/-	Rs. 50,000/-
6.	Medical expenses	Rs. 25,000/-	---
7.	Future treatment	Rs. 25,000/-	---
8.	Loss of income during treatment period	---	Rs. 60,000/-
9.	Attender charges	---	Rs. 10,000/-
	Total	Rs.6,39,200/-	Rs.2,90,000/-



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14.The first respondent claimant is entitled to total compensation of Rs.2,90,000/- along with interest at the rate of 7.5% p.a. from the date of petition till the date of realization. The pay and recovery ordered by the Tribunal is confirmed.

15.The civil miscellaneous appeal is partly allowed. The judgment and decree dated 18.11.2015 passed by the Motor Accidents Claims Tribunal (Special Sub Court), Cuddalore, in M.C.O.P.No.2244 of 2014, is modified to the above extent.

16.The appellant Insurance Company is directed to deposit the modified award amount before the Tribunal less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant is permitted to withdraw the excess amount, if any, already deposited by them.

17.On such deposit, the first respondent/ claimant is permitted to withdraw the modified award amount with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.



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18.The civil miscellaneous appeal is partly allowed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
(Special Sub Court), Cuddalore.



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