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C.M.A.No.568 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.568 of 2021
and
C.M.P.No.3542 of 2021

United India Insurance Company Ltd.,
75, Saraswathi Nilayam, Rajaji Nagar,
Rayakottai Road, Krishnagiri - 635 001.

... Appellant

Vs.

1.Chinnaponnu
2. N.Thabsum

... Respondents

PRAYER: Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 challenging the Judgment and Decree dated 11.10.2018 made in M.C.O.P. No.973 of 2011 on the file of the Motor Accident Claims Tribunal (Sub Court), Sankari.

For Appellant : Ms.I.Malar

For Respondents : Mr.C.Thangaraju

JUDGMENT



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This appeal has been filed by the Insurance Company, challenging the award passed by the Tribunal on the following grounds:

a) No contributory negligence fixed on the first respondent / claimant by the Tribunal though the first respondent / claimant was also responsible for the cause of the accident;

b) The quantum of compensation awarded by the Tribunal is excessive.

2. In so far as the first ground raised by the appellant / Insurance Company is concerned, there is no evidence available on record to prove that the first respondent / claimant was also responsible for the cause of the accident. The learned counsel for the appellant / Insurance Company did not also press for the first ground during the course of her submissions. It is also noticed that the appellant / Insurance Company has also not examined the driver of the lorry insured with the appellant to prove that the first respondent / claimant was also responsible for the accident. While that being so, this Court is of the considered view that the Tribunal has rightly exonerated the first respondent / claimant from any negligence on his part.

3. In so far as the quantum of compensation is concerned, this Court



will have to necessarily interfere with the quantum of compensation awarded by the Tribunal in favour of the first respondent / claimant. The Tribunal has awarded a total compensation of Rs.2,05,000/- to the first respondent / claimant as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>
Disability	1,00,000
Pain and suffering	50,000
Future Medical Expenses	30,000
Nutrition	15,000
Transport	5,000
Attendant	5,000
Total	2,05,000

4. The Tribunal while awarding the aforementioned compensation has observed that the first respondent / claimant on account of the accident has lost two teeth and was in the hospital only for a period of 3 days. No medical bills were also filed by the first respondent / claimant before the Tribunal and no evidence was also let in by the first respondent / claimant to prove that he will have to incur Rs.30,000/- towards future medical expenditure. The first respondent / claimant was sent to the Medical Board. But, the Medical Board has not issued any disability certificate considering the nature of injuries sustained by the first respondent / claimant.



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5. On a lump-sum basis, the Tribunal has awarded the disability compensation of Rs.1,00,000/- to the first respondent / claimant. However, apart from awarding disability compensation, the Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering, Rs.30,000/- towards future medical expenditure, Rs.15,000/- towards nutrition and Rs.5,000/- towards transportation and Rs.5,000/- towards attender charges.

6. In so far as the compensation awarded towards pain and suffering at Rs.50,000/- is concerned, the same is certainly excessive, considering the fact that the first respondent / claimant has lost only two teeth in the accident and was in the hospital only for a period of three days and also did not produce any medical bills to substantiate the seriousness of the injuries sustained by her. Therefore, this Court has necessarily to reduce the compensation awarded towards pain and suffering from Rs.50,000/- to Rs.10,000/-. Since there is no evidence placed on record by the first respondent / claimant that she will be incurring future medical expenditure, necessarily this Court will have to set aside the assessment of Rs.30,000/- by the Tribunal towards future medical expenditure.



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7. Similarly, after giving due consideration to the nature of the injuries sustained by the first respondent / claimant, the compensation awarded by the Tribunal towards nutrition is reduced from Rs.15,000/- to Rs.5,000/-. Considering the nature of the injuries sustained by the first respondent / claimant, the question of payment of attender charges does not arise. However, the same has been awarded by the Tribunal, which is erroneous. Accordingly, the assessment of Rs.5,000/- made by the Tribunal towards the attender charges payable to the first respondent / claimant is also set aside by this Court.

8. For the foregoing reasons, the compensation awarded by the Tribunal is reduced from **Rs.2,05,000/-** to **Rs.1,20,000/-** as detailed hereunder:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs.</i>	<i>Amount awarded by this Court in Rs.</i>
Disability	1,00,000	1,00,000
Pain and suffering	50,000	10,000
Future Medical Expenses	30,000	-
Nutrition	15,000	5,000
Transport	5,000	5,000
Attendant	5,000	-
Total	2,05,000	1,20,000



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9. In the result, this Civil Miscellaneous Appeal is **disposed of** by reducing the award amount from **Rs.2,05,000/-** to **Rs.1,20,000/-**. The appellant / Insurance Company is directed to deposit the amount awarded by this Court (**Rs.1,20,000/-**), after deducting the amount already deposited if any, together with interest at the rate of **7.5%** per annum from the date of the claim petition till the date of deposit and cost to the credit of **M.C.O.P. No.973 of 2011** on the file of the **Motor Accident Claims Tribunal (Sub Court), Sankari**, within a period of **four weeks** from the date of receipt of a copy of this judgment.

10. The first respondent / claimant is permitted to withdraw the said amount, once it is deposited by the appellant /Insurance Company, by filing an appropriate application before the Tribunal. On such application being made, the Tribunal shall transfer the amount lying to the credit of **M.C.O.P. No.973 of 2011** to the bank account of the appellant directly through RTGS, after deducting the amount already transferred to the claimant if any, within a period of **one week** thereafter. No costs. Consequently, the connected civil miscellaneous petition is closed.



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05.04.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Motor Accident Claims Tribunal (Sub Court), Sankari.
2. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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