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C.M.A.No.3070 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM:

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

C.M.A.No.3070 of 2024

and

CMP.No.25311 of 2024

TATA AIG General Insurance Co. Ltd.,
2nd Floor, Samson Towers, Pantheon Road,
Egmore, Chennai – 600 008.

...Appellant

Vs.

1. D.Sathyamoorthy

2. R.Veeramuthu

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the award dated 07.12.2022 made in MCOP.No.747 of 2017 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Cuddalore.

For Appellant : Mr.K.Vinod

For Respondents : Mrs.Ramya V.Rao, for R1
Notice dispensed with, for R2



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JUDGEMENT

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Challenging the award dated 07.12.2022 passed in MCOP.No.747 of 2017 on the file of the Motor Accident Claims Tribunal, (Principal Sub Court), Cuddalore, the insurance company is before this Court.

2. Mrs.Ramya V.Rao, learned counsel takes notice on behalf of the 1st respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal.

3. It is the case of the 1st respondent/claimant that on 10.11.2016 at about 10.10 am, when he was ridding his Hero Honda Splendor Motorcycle bearing Regn.No.TN-31-BA-8624 from North to south at a moderate speed by keeping extreme left of Vridhachalam to Cuddalore main road opposite to VAO Office, Kannarapettai, Cuddalore, at that time, a TATA ACE goods vehicle bearing Regn.No.TN-31-BC-7664, owned by the 2nd respondent insured with the appellant-insurance company driven by its driver in a rash and negligent manner which proceeding in front of the motorcycle driven by the 1st



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respondent/claimant suddenly stopped vehicle without making any signal, due to which, the 1st respondent dashed behind the said TATA ACE Goods vehicle and as a result, the 1st respondent sustained grievous injuries. Thereby, the 1st respondent filed a claim petition in MCOP.No.747 of 2017 claiming a compensation of Rs.5,00,000/-. Before the Tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1 to P.11 and on the side of the appellant-insurance company, one witness viz. R.W.1 was examined and exhibits R.1 and R.2 were marked and disability certificate was marked as Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence awarded a sum of Rs.4,55,968/- towards compensation payable by the appellant/insurance company. Aggrieved by the same, the appellant-insurance company has come up with this appeal.

4. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the 1st respondent/claimant and he was the one who dashed against the rear side of the vehicle insured with the appellant insurance company. While so, merely



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because the FIR came to be registered as against the driver of the appellant insured vehicle, the tribunal had fastened the entire liability as against the appellant, which is not sustainable, since FIR is not a substantive document and whatever is spoken in the FIR need not be taken at its face value and the FIR may not and need not contain all the details and it is settled law that FIR is not a conclusive proof nor is an encyclopedia for deciding the case and it is only to set the criminal law in motion and no further. Further, though the claimant claimed that at the time of accident the claimant was aged about 46 years and was a Sub Post Master by profession and was earning a sum of Rs.20,000/- per month and due to the injuries sustained by him, he is unable to continue his avocation which he was carrying on before the accident, however, in order to prove the same, no documentary evidence has been produced by the claimant and it is evident from the disability certificate Ex.C.1 issued by the Medical board that, the 1st respondent/claimant sustained 24% partial permanent disability. While such being the case, the tribunal had adopted the multiplier method, as if the disability sustained by the claimant is of functional in nature and awarded a compensation of Rs.3,74,400/- under the



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head Disability, which is not sustainable. Further, the compensation awarded under other heads are also on higher side and the same has to necessarily be interfered with. Accordingly, he prayed for appropriate orders.

5. Per contra, the learned counsel appearing for the 1st respondent submitted that, by considering all the relevant documents, the Tribunal passed the present impugned award, which cannot be said to be erroneous and the quantum of compensation awarded by the tribunal is already on the lower side and the same does not require further reduction. Accordingly, she prayed for dismissal of the appeal.

6. Heard learned counsel on either side and perused the material documents placed on record.

7. The major grievance of the appellant is that though the 1st respondent had sustained only partial permanent disability of 24%, the tribunal had adopted multiplier method for awarding compensation under the head



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Disability, which is not sustainable. A perusal of Ex.C1, Disability certificate issued by the Medical board makes it clear that, despite the injuries sustained by the 1st respondent in the above said accident, the 1st respondent can resume his job after his treatment and that the said injury sustained by him would not have any impact on the job performed by the claimant as also his earning capacity. Further, no oral or documentary evidence was submitted by the 1st respondent to show that he was discontinued from his job and only if the 1st respondent is not able to perform his avocation which he was carrying on before the accident, then the Tribunal can very well adopt the multiplier method for awarding compensation. In the absence of any proof, adoption of multiplier method to quantify the compensation at Rs.3,74,400/- by the tribunal under the head “For partial permanent disability” is wholly perverse and not sustainable and the same requires to be interfered with.

8. It is to be noted that there is no material which suggest that the injuries sustained by the victim precludes the victim from continuing his avocation; rather it is the opinion of the Medical Board that the injuries would



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not have an impact on the avocation of the victim. Hence, as per the existing law at the relevant point of time and also taking into account the nature of injuries suffered by the 1st respondent, this Court fixes a sum of Rs.6,000/- per percentage of disability. Accordingly, the amount under the head of “For Partial Permanent disability” stands modified to a sum of Rs.1,44,000/- (24% x Rs.6,000/- = Rs.1,44,000/-).

9. Insofar as the compensation awarded under the heads Extra nourishment, Attender charges and Pain and suffering are concerned, the said compensation awarded are on the lower side and thereby, this Court is inclined to enhance the compensation under the said heads to Rs.25,000/-, Rs.10,000/- and Rs.50,000/- respectively. At the same time, a sum of Rs.10,000/- has been awarded under the head Loss of Amenities, which is not sustainable and thereby, the same is rejected.

10. Similarly, though the 1st respondent had claimed that he is working in a Sub-Post master and was earning a sum of Rs.20,000/- per month,



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however, except the oral submission, no other documentary evidence has been submitted by the claimant to prove his monthly income. Hence, this Court while confirming the monthly income of Rs.10,000/- fixed by the tribunal, is inclined to awards compensation of Rs.30,000/- under the head Temporary loss of income over a period of three months.

11. Insofar as the compensation awarded under the other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the same.

12. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
For Partial Permanent disability	3,74,400/-	1,44,000/-
For Transport to hospital	10,000/-	10,000/-
For Extra nourishment	10,000/-	25,000/-
For Attender's charges	5,000/-	10,000/-
For pain and sufferings,	20,000/-	50,000/-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
mental agony		
For Loss of amenities	10,000/-	-
For Medical expenses	6,568/-	6,568/-
For temporary loss of income	20,000/-	30,000/-
Total	Rs.4,55,968/-	Rs.2,75,568/-

13. Insofar as the negligence fixed by the Tribunal is concerned, the accident had happened at about 10.00 am and it is the 1st respondent/claimant who dashed against the rear side of the vehicle insured with the appellant. When the victim had dashed on the rear side of the vehicle insured with the appellant, a duty is cast on the victim to spell out the reason for such an act. However, there is no material, both oral and documentary submitted by the claimant to show that the act of negligence is on the vehicle insured with the appellant. However, at the same time, the vehicle insured with the appellant cannot also be absolved outright by this Court as there is no sufficient material to arrive at such a conclusion against the victim. In such circumstances, this Court considers just and reasonable that contributory negligence at 10% be



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fixed on the 1st respondent/claimant.

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14. After reducing 10% for the negligence fixed on the part of the 1st respondent/claimant from the compensation arrived at by this Court ie., Rs.2,75,568/-, the 1st respondent/claimant is entitled to receive a sum of **Rs.2,48,011.2/-** rounded off to **Rs.2,48,015/-** as compensation from the appellant/insurer.

15. Accordingly, the appeal is allowed in the aforesaid terms and the impugned award of the Tribunal is modified by reducing the compensation amount from **Rs.4,55,968/-** to **Rs.2,48,015/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.747 of 2017 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 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 through RTGS within a period of two (2) weeks



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thereafter. Any amount, in excess of the award ordered by this Court, which has been deposited by the insurance company, the insurance company is permitted to seek withdrawal of the same by filing necessary application before the Tribunal. There shall be no order as to costs in the present appeal. Consequently, the connected Miscellaneous petition is closed.

27.11.2024

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

To

The Motor Accident Claims Tribunal,
Principal Sub Court,
Cuddalore.



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M.DHANDAPANI, J.

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