



CMA No.2307 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2307 of 2022

Chola Ms. General Insurance Company Ltd.,
No.131/1/25A, Athiyaman (Nethaji)
Bye Pass Road
Opposite to Smart Shopping Mall
Dharmapuri H.O.
Dharmapuri Taluk
District-636 701.

.. Appellant

.Vs.

1.M.Kumaraselvam

2.S.Senji

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.4.2022 made in MCOP No.521 of 2020, on the file of the Motor Accident Claims Tribunal (special Subordinate Judge) at Dharmapuri.

For Appellant : Mrs.R.Sree Vidya

For Respondents : Mr.B.Gopalakrishnan [R1]



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JUDGMENT

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The Insurance Company has filed this appeal questioning the award passed by the Motor Accident Claims Tribunal (Special Subordinate Judge), Dharmapuri in M.C.O.P.No.521 of 2020, dated 20.04.2022.

2.The claimant, who is an advocate, was riding a two wheeler on 04.5.2019 at about 5.00 pm., from Dharmapuri to Hosur Road and when the vehicle approached Palacode Bus Stop, the offending vehicle, which was driven in a rash and negligent manner, dashed on the two wheeler driven by the claimant and as a result, he sustained grievous injuries. He was treated for 'closed proximal and knee spanning external fixation application left lower limb'. The Medical Board assessed the disability at 25%. It was under those circumstances, the claimant filed the claim petition before the Tribunal seeking for compensation.

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 was caused only due to the rash and negligent driving on the part of the offending vehicle. It was brought to the notice of the Tribunal that the claimant was not having a valid driving license at the time of riding the two wheeler. However, since the entire negligence was not attributable to the



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claimant, the Tribunal did not deem it fit to attribute any contributory negligence as against the claimant.

4.The Tribunal thereafter proceeded to fix the total compensation at Rs.9,75,428/- in the following manner:

S.No.	Heads of Compensation	Apportionment of Amount
1.	Just compensation	Rs.6,63,000/-
2.	Pain and suffering	Rs. 30,000/-
3.	Cost of Nourishment	Rs. 25,000/-
4.	Cost of the attender	Rs. 10,000/-
5.	Medical expenses	Rs. 2,36,428/-
6.	Transport expenses	Rs. 10,000/-
7.	Loss of clothing on accident	Rs. 1,000/-
	Total	Rs. 9,75,428/-

5.The above compensation was directed to be paid at 7.5% interest per annum from the date of petition till the date of deposit. The Insurance Company, aggrieved by the quantum of compensation fixed by the Tribunal, has filed this appeal before this Court.

6.Heard Mrs.R.Sree Vidhya, learned counsel for the appellant and Mr.B.Gopalakrishnan, learned counsel for R1.



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7. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award that was passed by the Tribunal and the reasons assigned therein.

8.The main focus of the argument that was placed before this Court revolved around the Tribunal adopting the multiplier method in this case. The Tribunal had adopted 13 as the multiplier for 25% disability that was suffered by the claimant.

9.Ex.P.3 and Ex.P.4, which are the discharge summaries issued by the hospital, shows that the claimant was treated for 'closed proximal and knee spanning external fixation application left lower limb'. Thereafter, the claimant was once again admitted 'external fixator was removed and open reduction internal fixation with medical LCP left proximal tibia" on 24.5.2019.

10.The Medical Board had assessed the disability as 25%. The Medical Board found that the claimant sustained pain while squatting, partial cross leg sitting and pain over left hip region. This does not necessarily result in any functional disability considering the fact that the claimant was a practicing advocate. Therefore, there is no question of applying the multiplier method in



this case. The claimant will only be entitled for compensation for disability by fixing the notional income per percentage. In the light of the above discussions, the claimant, under the head 'disability', will be entitled for a total compensation of Rs.1,75,000/- [25% x Rs.7,000/-].

11.The Tribunal has not granted any compensation under the head 'loss of income' since the Tribunal had adopted the multiplier method. Hence, this Court is inclined to grant a separate compensation under this head. Considering the nature of injury sustained by the claimant and the treatment undergone by him, this Court is of the considered view that he would have been out of action at least for six months. Considering his stand in the bar, the monthly income can be fixed at Rs.20,000/-. Thus the loss of income can be fixed at Rs.1,20,000/- (Rs.20,000/- x 6).

12.The compensation that has been granted under the other heads looks reasonable and it does not require the interference of this Court.

13.In the light of the above discussion, the total compensation fixed by the Tribunal is modified as follows:



S No	Head	Compensation awarded by this Court
1	Just compensation	Rs. 1,75,000/-
2	Pain & Suffering	Rs. 30,000/-
3	Cost of nourishment	Rs. 25,000/-
4	Cost of the attender	Rs. 10,000/-
5	Medical Expenses	Rs. 2,36,428/-
6	Transport Expenses	Rs. 10,000/-
7	Loss of clothing on accident	Rs. 1,000/-
8	Loss of Income	Rs. 1,20,000/-
	Total	Rs. 6,07,428/-

14. The compensation awarded by the Tribunal at Rs.9,75,428/- is reduced to Rs.6,07,428/-. The above compensation arrived at by this Court in this judgment to the tune of Rs.6,07,428/- shall carry interest at 7.5% p.a. from the date of claim petition till the date of deposit. It is seen from the award passed by the Tribunal that the claimant was already permitted to withdraw the award amount together with interest and costs. In view of the reduction of the award amount as indicated in this judgment, the appellant - Insurance Company will be at liberty to recover the excess amount from the claimant/first respondent herein. The other directions issued by the Tribunal with regard to the mode of payment of compensation remain unaltered.



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15. The civil miscellaneous appeal is disposed of with the above directions. No costs.

15.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

Motor Accident Claims Tribunal
(Special Subordinate Judge)
Dharmapuri.

N. ANAND VENKATESH., J



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