



Civil Miscellaneous Appeal No.3278 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.3278 of 2021

The Branch Manager,
M/s.United India Insurance Co. Ltd.,
Divisional Office,
Ooty Main Road,
Mettupalayam.

... Appellant

Vs.

1.A.Loganathan
2. P.Thangavel

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.07.2019 made in M.C.O.P.No.961 of 2016 on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge), Coimbatore.

For Appellant : Mr.D.Bhaskaran

For Respondents : Mr.M.Lokesh R1
R2- No appearance

JUDGMENT

The appellant insurance company, aggrieved by the quantum of compensation awarded dated 06.07.2019 made in M.C.O.P.No.961 of



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2016 on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge), Coimbatore.

2. The 1st respondent / claimant filed a claim petition on the ground that on 05.08.2016, he was traveling as pillion rider in the Bajaj Pulsar Motor Cycle bearing Reg. No.TN 40 L 1921 along with his friend Gururaj from Saravanampatti to Kannarpalayam. While crossing the Mathampalayam Railway gate opp to Mohanraj Thottam from north to south, at that time the TATA Ace mini tempo bearing Reg. No.TN 40 C 0135 driven by the second respondent came in a rash and negligent manner and dashed against the motor cycle, due to the accident, the first respondent sustained grievous injuries. It is under these circumstances, the claim petition came to be filed before this Court seeking for payment of 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 had taken place only due to the rash and negligent driving on the part of the driver of the mini tempo. Having



rendered such a finding, the total compensation was fixed at Rs.20,80,895/- under various heads.

4. The Insurance company aggrieved by the quantum of compensation fixed by the Tribunal has filed the present appeal before this Court.

5. The learned counsel for the appellant insurance company submitted that the Tribunal has adopted multiplier method for the disability and fixed the notional income at Rs.22,000/- which is unfair. The claimant has not produced any proof with regard to the avocation. Even then the Tribunal has fixed the notion income which is too high. A compensation awarded by the Tribunal under pain and sufferings also excessive. The award of Rs.50,000/- granted under the head loss of amenities also not warranted. Hence, this Court may set aside the award by allowing the appeal.

6. The learned counsel for the first respondent submitted that after considering the witnesses and documentary evidence, the Tribunal has



awarded compensation which is just and reasonable and the same does not warrant any interference.

7. Heard the learned counsel for the appellant and the first respondent and perused the materials available on record.

8. The factum of the case are not in dispute. The insurance company has preferred the appeal questioning the quantum arrived at by the Tribunal.

9. On perusal of the wound certificate and discharge summary, the first respondent sustained ***"comminuted supracondylar fracture femur -Right Knee, right knee was operated and surgical steel plate is fixed."***

The medical board assessed the disability at 47% as permanent disability. The Tribunal has adopted the multiplier method on the ground that the claimant has suffered permanent disability.

10. As per the decision of the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar*, the claimant has to prove, after the accident he



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could not continue his employment and in the absence of functional disability, there is no question of applying the multiplier method and only the per percentage method has to be adopted.

11. The accident had taken place in the year 2016 and therefore, this Court is inclined to fix Rs.6,000/- per percentage and the compensation under the head of disability is fixed at Rs.2,82,000/- (47% x Rs.6000). The Tribunal has awarded a sum of Rs.2,00,000/- and 50,000/- towards pain and sufferings and loss of amenities respectively which has to be modified and this Court awards a sum of Rs.1,00,000/- towards pain and sufferings and loss of amenities. This Court reduces the amount in respect of damages to clothes from Rs.5,000/- to Rs.1,000/- and enhances the amount in respect of extra nourishment from Rs.10,000/- to Rs.20,000/- and further, this Court is inclined to award a sum of Rs.20,000/- towards loss of income during treatment period.

12. Insofar as all the other heads are concerned, the compensation fixed by the Tribunal is reasonable and it does not require the interference of this Court.



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13. In the light of the above discussion, this Court modifies the compensation in the following manner:

<i>Compensation awarded under the head</i>	<i>Compensation awarded by the Tribunal (in Rs.)</i>	<i>Compensation awarded by this Court (in Rs.)</i>
Loss of income	16,13,040	2,82,000
Medical Bills	1,92,855	1,92,855
Loss of amenities	50,000	1,00,000
Pain and sufferings	2,00,000	
Transportation	10,000	10,000
Extra nourishment	10,000	20,000
Damages to cloths	5,000	1,000
Loss of income during treatment		20,000
Total	20,80,895	6,25,855

14. The compensation awarded by the Tribunal at Rs.20,80,895/- is reduced to Rs.6,25,855/-. It was brought to the notice of this that the compensation amount has already been deposited by the appellant insurance company. The respondent will be entitled to withdraw the compensation amount fixed by this Court along with



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interest. Any excess amount lying after the withdrawal, shall be permitted to be withdrawn by the appellant herein.

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

No costs.

18.12.2024

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To

Motor Accident Claims Tribunal,
(Special Subordinate Judge), Coimbatore.



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M.DHANDAPANI, J.

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