



CMA No.3105 of 2021
and CMP No.17569 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

CMA No.3105 of 2021
and CMP No.17569 of 2021

The Manager,
United India Insurance Co. Ltd.,
No.316, State Bank of India,
Upstairs, Main Road, Pothanur,
Paramathy Velur Taluk,
Namakkal District - 637 101.

... Appellant

Vs.

1.Gopal Samy
2.Chithra

... Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 08.03.2021 made in M.C.O.P.No.100 of 2020 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal.



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CMA No.3105 of 2021
and CMP No.17569 of 2021

For Appellant : Mr.C.Paranthaman

For R1 : Mr.D.Sathya
Legal Aid Counsel

For R2 :No appearance

J U D G M E N T

The appellant/Insurance company has filed this present appeal challenging the award passed by the Tribunal dated 08.03.2021 made in M.C.O.P.No.100 of 2020 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal, on the ground of quantum.

2. The factum of accident, manner of accident, vehicle being insured with the appellant/Insurance company and the rash and negligent driving by the driver of the offending vehicle and validity of the insurance on the date of the accident are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence are hereby confirmed.



CMA No.3105 of 2021
and CMP No.17569 of 2021

3. On the point of quantum of compensation, heard the learned counsel for the appellant/Insurance Company as well as learned counsel appearing for the first respondent.

4. The 2nd respondent/owner of the vehicle remained *ex parte* before the Tribunal.

5. The appellant/Insurance Company has filed counter statement stating that the manner of accident narrated in the FIR and the petition is false. Since the first respondent is a tort-feasor, he is not entitled to claim compensation from the appellant/Insurance Company. The 1st respondent has not proved his avocation and income by producing valid documents. For the breach and violation of the terms and conditions of the insurance policy, the appellant/Insurance Company is not liable to pay any compensation and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st respondent examined himself as P.W.1, Dr.Sivalingam was examined as P.W.2 and marked 12 documents as Exs.P1



CMA No.3105 of 2021
and CMP No.17569 of 2021

to P12. No oral and documentary evidence was adduced on the side of the appellant.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred due to rash and negligent driving by the driver of the lorry belonging to the second respondent and directed the second respondent and appellant / Insurance Company being insurer of the said vehicle to jointly and severally pay a sum of Rs.4,59,200/- as compensation to the first respondent.

8.Against the said award dated 08.03.2021, made in M.C.O.P.No.100 of 2020, the appellant / Insurance Company has come out with the present appeal.

9.The contention of the learned counsel appearing for the appellant / Insurance Company is that the Tribunal erred in applying multiplier method for awarding compensation towards loss of income due to permanent disability for the nature of injuries sustained by the 1st respondent and the 1st



CMA No.3105 of 2021
and CMP No.17569 of 2021

respondent is not entitled to compensation by applying multiplier method.

The said contention has considerable force. A perusal of the award of the Tribunal shows that P.W.2/Doctor assessed the disability of the 1st respondent at 15%, the 1st respondent could not be able to earn as before. For the said reason, the Tribunal applied multiplier method and granted compensation. The reasoning of the Tribunal for applying multiplier method for granting compensation towards disability and loss of income due to permanent disability is erroneous. The amounts awarded by the Tribunal under different heads are not meagre.

10. It is seen from the records that though the disability was assessed as 28% by P.W.2 / Doctor in Ex.P12 (disability certificate) the Tribunal has reassessed the same as 15%. The documents produced on behalf of the petitioner are Ex.P4 (wound certificate) and Ex.P10 (discharge summary) issued by the C.M.Hospital, Namakkal. In Ex.P4 and Ex.P10 documents, the injuries sustained by the petitioner in the accident are enumerated and they are as follows:

- i. Major crush injury right ankle joint with fracture lateral malleolus right



CMA No.3105 of 2021
and CMP No.17569 of 2021

ankle joint.

- ii. Contusion with abrasion right side abdomen.
- iii. Contusion with abrasion right hip joint.
- iv. Contusion with swelling right leg.
- v. Contusion with swelling chest.

11.As far as quantum of compensation is concerned, the 1st respondent was aged 31 years at the time of the accident. He was a coolie and was earning a sum of Rs.20,000/- per month. To substantiate the said contention, the 1st respondent has not filed any documents. In the absence of any material evidence with regard to avocation and income of the 1st respondent, the Tribunal fixed a sum of Rs.10,000/- as monthly income of the 1st respondent, which is according to me is very high and hence, the same is reduced to Rs.5,000/-. Disability fixed by PW2 / Doctor at 28% is hereby confirmed. However, taking note of the nature of the accident and the disability caused upon ankle portion cannot be termed as a loss of earning capacity and consequently I have no recital to hold that the ratio laid down in the "Rajkumar's case" is not applicable. Therefore, the multiplier method adopted



CMA No.3105 of 2021
and CMP No.17569 of 2021

by the Tribunal is erroneous and hence, findings to that effect rendered by the trial Court stands vacated and the quantum of compensation awarded by the Tribunal is also stands vacated. Considering the nature of injuries and period of treatment this Court granted a sum of Rs.5,000/- towards permanent loss during the treatment and a sum of Rs.10,000/- towards loss of amenities. Thus, the compensation awarded by the Tribunal is reassessed as below:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of income due to permanent disability	4,03,200	1,40,000
2.	Medical bills	16,000	16,000
3.	Pain and sufferings	25,000	25,000
4.	Transport to Hospital	5,000	10,000
5.	Extra nourishment	10,000	10,000
6.	Permanent loss during the treatment	-	5,000
7.	Loss of amenities	-	10,000
	Total	Rs.4,59,200/-	Rs.2,16,000/-

12. In the result, the appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,59,200/- is hereby reduced to Rs.2,16,000/- together with interest at the rate of 7.5% per annum from the date of petition



CMA No.3105 of 2021
and CMP No.17569 of 2021

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till the date of deposit. The appellant/Insurance Company and the second respondent are directed to deposit the modified award amount with interest and costs, jointly and severally, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant/first respondent is permitted to withdraw the award amount with accrued interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.100 of 2020, if the entire award amount has already been deposited by them. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

26.03.2024

Index : Yes/No
Speaking/non-speaking order
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CMA No.3105 of 2021
and CMP No.17569 of 2021

RMT.TEEKAA RAMAN.J,

mtl

To

1. The Additional District Court, Namakkal.
2. The Section Officer,
V.R.Section, High Court, Chennai.

CMA No.3105 of 2021
and CMP No.17569 of 2021

26.03.2024