



Civil Miscellaneous Appeal Nos.35 & 506 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.35 & 506 of 2024

and

C.M.P.No.301 of 2024

C.M.A.No.35 of 2024

The Branch Manager,
Acko General Insurance Co. Ltd.,
Puducherry

... Appellant

Vs.

1.Venkatesan
S/o.Arjunan

2.Rosaline Maria Pushpam J
D/W/o.Joseph Anthuvan

3.Saravanan
S/o.Sarangam

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2023 made in M.C.O.P.No.506 of 2022 on the file of Principal Sub Court, Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr.B.Siva Kollappan



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For Respondents : Mr.R.Sreedhar [R1]
No appearance [R2 & R3]

C.M.A.No.506 of 2024

1.Venkatesan
S/o.Arjunan ... Appellant

Vs.

1.The Branch Manager,
Acko General Insurance Co. Ltd.,
Puducherry

2.Rosaline Maria Pushpam J
D/W/o.Joseph Anthuvan

3.Saravanan
S/o.Sarangam ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.04.2023 made in M.C.O.P.No.506 of 2022 on the file of Principal Sub Court, Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr.R.Sreedhar

For Respondents : Mr.B.Siva Kollappan [R1]
No appearance [R2 & R3]

COMMON JUDGMENT



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These appeals have been filed by the insurance company as well as the claimant.

2. C.M.A.No.35 of 2024 has been filed by the insurance company questioning the quantum of compensation fixed by the Tribunal and to an extent, questioning the aspect of negligence.

3. C.M.A.No.506 of 2024 has been filed by the claimant seeking for enhancement of compensation fixed by the Tribunal.

4. The claimant was riding a two-wheeler along with a pillion rider at Pondy-Villupuram Main Road on 06.02.2022 and at about 03.30 p.m., when the vehicle was near Erikarai, a car belonging to the second respondent came in a rash and negligent manner and dashed on the two-wheeler as a result of which the claimant fell down and sustained grievous head injuries. The claimant was an inpatient for nearly 22 days and he suffered right temporo-parietal EDH with midline shift and underwent surgery on 06.02.2022 by way of right temporo-parietal craniectomy and hematoma evacuation. The claimant suffered 75% disability. It is under these circumstances, the claim petition came to be



filed before the Tribunal seeking for compensation.

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5. 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 of the car on the part of the second respondent. Having rendered such a finding, the Tribunal proceeded further to fix the total compensation at Rs.19,70,383/- in the following manner:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Loss of earning capacity	14,62,500/-
2.	Medical expenses	2,85,883/-
3.	Loss of comfort and basic amenities	1,00,000/-
4.	Pain and sufferings	50,000/-
5.	Attender charges	22,000/-
6.	Future medical expenses	20,000/-
7.	Rich and nutritious food	20,000/-
8.	Transport expenses	10,000/-
	Total	19,70,383/-

6. The Tribunal also took into consideration the fact that the claimant was under the influence of alcohol and therefore, 10%



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contributory negligence was fixed against the claimant and accordingly, the total compensation was arrived at Rs.17,73,345/- [19,70,383 - 1,97,038]. The compensation was directed to be paid to the claimant with interest at the rate of 7.5% p.a. The said award has now been put to challenge by the insurance company as well as the claimant.

7. Heard Mr.B.Siva Kollappan, learned counsel for insurance company and Mr.R.Sreedhar, learned counsel for claimant.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The accident register that was marked on the side of the insurance company as Ex.R1 shows that the accident had taken place due to self-fall and the claimant was under the influence of alcohol. However, the First Information Report came to be registered as against the driver of the car and a final report was also filed and it seems that the driver of the



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car had admitted the guilt and paid the fine amount. It is under these circumstances, the Tribunal had fixed the negligence on the part of the car driver. The Tribunal, taking into consideration the fact that the claimant was under the influence of alcohol, attributed 10% contributory negligence on the claimant and accordingly, reduced the same from the total compensation fixed. This Court is not inclined to interfere with the finding of the Tribunal insofar as the negligence aspect is concerned.

11. The next issue pertains to fixation of compensation under various heads.

12. Learned counsel for insurance company submitted that the evidence of RW-2 shows that the claimant was suffering from AIDS. This was concealed. It was submitted that the doctor had categorically stated that if he had been made aware that the claimant was suffering from AIDS, the very calculation of the disability would have done differently since the claimant lacked the capacity of immunity in his body due to AIDS. The Tribunal has not given any finding in this regard. Therefore, learned counsel questioned the very fixation of percentage of disability under Ex.X1 - certificate issued by the Medical Board for the disability of



petitioner.

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13. Learned counsel for insurance company has also questioned the multiplier method that was adopted by the Tribunal on the ground that there was nothing to show that the claimant suffered from total functional disability and that it was always possible for the claimant to do some other work to eke out his livelihood. Learned counsel also questioned the fixation of compensation under the head loss of comfort and amenities and submitted that it is on the higher side.

14. *Per contra*, learned counsel for claimant submitted that as per Ex.X1 - certificate issued by the Medical Board, the claimant had suffered 75% permanent disability. Considering the fact that the claimant had post head injury sequale, he cannot continue as a driver of the vehicle and he is incapable of doing any other work. Therefore, the Tribunal ought to have fixed loss of earning capacity at 100%. Learned counsel submitted that at least the Tribunal ought to have considered the loss of earning capacity at 75%, whereas the Tribunal has fixed the same at 50% without any reasoning. Learned counsel further submitted that there was absolutely no proof before the Tribunal to show that the claimant has



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contributed to the accident on the ground that he was under the influence of alcohol. Therefore, the Tribunal ought not to have attributed 10% contributory negligence on the claimant.

15. This Court carefully went through each and every head under which compensation has been granted by the Tribunal. The Tribunal has taken into consideration the grievous head injury that was sustained by the claimant and the surgery underwent by the claimant and the disability that is suffered by the claimant by way of post head injury sequele. The claimant was a lorry driver and that was the avocation in which the claimant was involved at the relevant point of time. He was already aged 47 years at the time of accident. Therefore, it will be very difficult for the claimant to seek for any other job considering the nature of injury sustained by him. The Tribunal took that into consideration and had fixed the loss of earning capacity at 50%. The Tribunal has assigned sufficient reasons for fixing that percentage and it sounds very reasonable. That apart, the Tribunal had also fixed the notional monthly income at Rs.15,000/- and added 25% towards future prospects and the same also sounds very reasonable. Therefore, the compensation awarded under the head 'loss of earning capacity' does not require the interference of this



16. Insofar as the compensation awarded under the other heads is concerned, this Court finds that the same is very reasonable considering the nature of injury sustained by the claimant and the operation underwent by him and the number of days he was taking treatment as inpatient. Insofar as loss of comfort and amenities is concerned, the Tribunal took into consideration Ex.P6 - discharge summary and Ex.X1 - certificate issued by Medical Board for the disability of the petitioner and came to a conclusion that the head injury suffered by the claimant had a direct impact on his day-to-day activities. It is under these circumstances, the Tribunal had fixed the compensation payable at Rs.1,00,000/-. The same does not really require the interference of this Court.

17. Insofar as fixation of 10% towards contributory negligence is concerned, the Tribunal has taken into consideration Ex.R1 - Accident Register and also the fact that there was nearly 16 days delay in registering the First Information Report and there was also an indication that the claimant was under the influence of alcohol. Therefore, there is nothing wrong in the Tribunal fixing 10% contributory negligence and the



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