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C.M.A.No.2352 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2024

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THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.2352 of 2024 and
CMP No.18698 of 2024

The Manager
Magma HDI General Insurance
Company Limited
Office at Navin's Presidium, 3rd Floor,
N.M. Road, New No.17/19,
Old No.103 “ B” block, 3 A
Nelson Manickkam Road, Chennai – 600 029.
Now Office at : Grace Building, 1st Floor,
No.25/3, MC Nicholoas Road,
Chennai – 600 031

... Appellant

Vs.

1. K.S. Rajasekar

2. K. Meganathan

... Respondents

Prayer: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to set aside the award passed as against the appellant herein who is the respondent in the claim petition under the fair and decretal order dated 24.01.2023 in MCOP No.6046 of 2019 on the file of Motor Accidents Claim Tribunal, II Judge, Court of Small Causes, Chennai and to dismiss the claim petition entirely as against the appellant herein.



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For Appellant : Mrs.R.Sree Vidhya

For Respondents : Mrs.M.Malar

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JUDGMENT

(Judgment of the Court was delivered by J. Nisha Banu, J and R. Kalaimathi, J)

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation awarded by the Claims Tribunal.

2.Brief facts of the case is as follows:

The facts of the case is that when the first respondent/K.S. Rajasekar was proceedings in a two wheeler bearing Registration No.TN-20-CS- 4177 a TATA Ace vehicle bearing Registration No.TN 20 CA 6915 belonging to the second respondent driven by its driver in a rash and negligent manner came behind the first respondent vehicle and dashed the same, thereby the accident occurred. As a result of which the first respondent sustained grievous injuries and fracture. Hence, the first respondent filed a petition under Section 166 of M.V Act seeking compensation of Rs.45,00,000/- As against the said claim, the Tribunal has awarded a sum of Rs.29,02,166/- as total compensation. Against which, the Insurance Company has filed the present Appeal.



3. The second respondent/ owner of the offending vehicle, remained *ex parte* before the Tribunal.

4. The learned counsel for the appellant submitted that in the disability certificate there was no expression about the percentage of disability. When this being the case the Tribunal has assessed 46% towards disability and the same is not reasonable, which requires interference by this Court. Hence, prays to allow this petition.

5. The appellant/Insurance Company, being insurer of alleged vehicle owned by the second respondent, filed counter statement before the Tribunal, denying the averments made in the claim petition and stated that the accident occurred solely due to the negligence of the first respondent, who had driven the two wheeler bearing Registration No.TN-20-CS- 4177 without observing any traffic rules and regulations. The amount of compensation claimed by the claimant is highly exorbitant and does not bear any legal, equitable and reasonable basis. The various heads under which the compensation is claimed are imaginary and it was made only for the purpose of filing the claim petition. Hence, the claimant is not entitled for any amount of compensation as claimed by them.



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6. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials placed on record.

7. The Tribunal, based upon the facts, materials, evidence and also based upon the dictum laid down in the decision of the Supreme Court, reported in **2017 (2) TNMAC 609 (National Insurance Company Limited Vs Prabay Sethi and Others)** has calculated the loss of income at Rs.20,86,560/-, by taking into account the annual loss of income at Rs.21,000/-, adopting the multiplier of '18' and adding 40% towards Future prospectus. Further the tribunal awarded pain and sufferings, loss of earnings during treatment, Medical Expenses, attender Charges, Transportation Charges and Extra Nourishment have been estimated Rs.50,000/-, Rs.45,000/-, Rs.5,80,606/-, Rs.50,000, Rs.20,000/- Rs.50,000/- and Rs.20,000/-. Thus, the total compensation was estimated at Rs.29,02,166/-.

8. It is the contention of the appellant that the Tribunal on perusal of the Ex.C1 and the functional disability caused to the first respondent assessed the disability caused to the petitioner on his body as a whole as 46%. The core contention of the appellant is that the claimant/first respondent has failed to



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prove that he suffered functional disability and requires future medical treatment. Hence, he is not entitled to compensation by adopting multiplier method. This Court, on perusal of Ex.P.9/discharge summary observed that the claimant suffered fracture of Traumatic Leg Injury - (a) Right ankle 15 x 10 cm Lacerated over anterior aspect of right ankle exposed talus (b) There is fracture of dislocation of talo calcicular joint with exposure of mid foot and multiple injuries in entire body and the same cannot be compensated in terms of money. Hence the amount awarded under the head Disability is reasonable and the same does not require interference by this Court.

9. This Court is of the opinion that the compensation awarded under all the heads by the Tribunal are reasonable, weight of evidence and based on settled principles and therefore, there is no ground to interfere with the judgment passed by the Tribunal below. Further, the grounds taken by the Insurance Company on the point of liability cannot be raised at this stage and therefore, it cannot be accepted. Therefore, the grounds raised by the Insurance Company are liable to be rejected and they are rejected accordingly. The compensation awarded by the Tribunal is just, fair and reasonable.



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10. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

The appellant / Insurance Company shall deposit the entire compensation amount, along with interests and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / injured / first respondent herein, forthwith, through RTGS. Consequently, the connected Miscellaneous Petition is closed.

(J.N.B., J.) (R.K.M., J.)
19.09.2024

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To

The Motor Accidents Claims Tribunal, II Judge,
Court of Small Causes, Chennai.



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J. NISHA BANU, J.
and
R.KALAIMATHI, J.

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C.M.A.No.2532 of 2024

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