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CMA.No.263 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

C.M.A.No.263 of 2020 &
CMP.No.1856 of 2020

The Oriental Insurance Co. Ltd,
Kumar Complex, First Floor,
146, South Car Street,
Tiruchengode 637 211

.. Appellant

/vs/

1. Govindaraj (died)
2. Kandhasamy
3. Soniya Priya
4. Minor Athirai, represented by
Soniypriya
5. Eswari

(R3 to R5 are impleaded as Lrs of the
deceased R1 as per the order of this Court
dated 24.09.2024 made in CMP.Nos.10710
to 10712 of 2024 in CMA.No.263/2020)

... Respondents

Prayer : Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 against the judgment and decree made in M.A.C.T.O.P.o.434 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District Judge) Tiruppur dated 14.09.2018.

For Appellant
For Respondents

... Mr. M. Krishnamoorthy
.... R2- notice dispensed with
R3 & R4-No appearance
R5 – Mr.B.Kumarasamy



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CMA.No.263 of 2020



JUDGMENT

This Civil Miscellaneous Appeal is filed against the judgment and decree made in M.A.C.T.O.P.No.434 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District Judge) Tiruppur dated 14.09.2018.

2. The facts leading to filing of this Civil Miscellaneous Appeal is as follows:-

(i) On 07.08.2013 at about 17.15 hours, when the claimant/1st respondent was riding in a two wheeler bearing Regn. No.TN 57 T 7412 from east to west direction from Avinashi to Covai NH 47 Main road, a car bearing Regn. No. TN 34 M 7078, driven by its driver in a rash and negligent manner which came from the opposite direction, dashed against the petitioner. On account of the accident, the petitioner sustained injuries at his right thigh, right pelvis, right leg, right great toe and injuries all over the body. Immediately, he was taken to Deepa Hospital at Tiruppur as inpatient, where he underwent treatment for two months. The claimant spent huge amount towards medical treatment.

(ii) Claiming compensation for the fracture and injuries sustained in the accident, the claimant/1st respondent filed a claim petition in



MCOP.No.434 of 2014 before the M.A.C.T.O.P.No.434 of 2014 on the file of the Motor Accident Claims Tribunal (II Additional District Judge) Tiruppur seeking compensation of Rs.15 lakhs.

(iii) According to the claimant, he was employed in foreign tours as a marketing and earned Rs.12,000/- per month, but after the accident, he is unable to attend his work. The injuries sustained by the claimant is permanent in nature, the petitioner is unable to do his normal work due to the fracture sustained by him at right thigh. Since the accident had occurred due to the negligent driving of the driver of the lorry belonging to the 2nd respondent/owner of the vehicle and insured with the appellant/insurance company, the claimant filed a claim petition seeking compensation of Rs.15 lakhs from them jointly and severally.

3. Before the claims tribunal, on the side of the claimants, witnesses PW1, PW2 and PW3 were examined and exhibits Ex.P.1 to Ex.P.7 were marked. On the side of the respondents, RW1 was examined as witness and Ex.R1 to Ex.R3 were marked. The tribunal awarded a compensation of Rs.10,40,344/- and directed the insurer of the car/appellant herein to pay the compensation together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.



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4. The compensation awarded by the tribunal under various conventional heads are as follows:

<i>S.NO.</i>	<i>Conventional Heads</i>	<i>Amount</i>
1.	Loss of Income	Rs.9,25,344/-
2.	Pain and Sufferings	Rs. 40,000/-
3.	Extra Nourishment	Rs.30,000/-
4.	Attendant charges	Rs. 15,000/-
5.	Transportation	Rs. 15,000/-
6	Medical Bills	Rs.15,000/-
	Total	Rs.10,40,344/-

5. Aggrieved against the quantum of compensation fixed by the tribunal, the appellant/Insurance company has filed the present Civil Miscellaneous Appeal.

7. Learned counsel appearing for the appellant Insurance Company submitted that the accident was not caused due to the rash and negligent driving of the car, but it was caused due to the rider of the two wheeler who rode his vehicle to the wrong side of the road in a high speed and hit against the car coming from the opposite direction, which is evidenced by Ex.R3 sketch. Further, FIR was also filed mentioning that when the 1st



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respondent, attempted to overtook the car in a rash and negligent manner, he dashed against the car insured with the insurance company. Hence, the insurance company is not liable to pay any compensation, however, the said fact was not properly adjudicated by the tribunal and the tribunal fastened the entire liability as against the appellant insurance company. The tribunal ought to have atleast held that the first respondent had contributed to the accident to major extent. The tribunal has awarded excessive sum of Rs.10,00,000/- as compensation for the fracture of femur and great toe of left leg sustained by the claimant. In Ex.P6, the disability has been assessed excessively at 36% only by PW3 Doctor, but not by the Medical Board. In the absence of any functional disability, the tribunal ought not to have awarded compensation by applying the multiplier method which is contrary to the decision of ***Rajkumar Vs Ajay Kumar reported in (2011) 1 SCC 343***. The claimant has neither furnished any address of his employer, nor marked any document to prove that he was employed in marketing in Foreign Tour, however, the tribunal has awarded excess amount of Rs.9,25,344/- as compensation under the head loss of earning capacity without verifying the fact as to whether the claimant has really suffered any loss of earning capacity. Hence, he prayed for allowing the appeal.



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5. Per contra, the learned counsel appearing for the 5th respondent submitted that the trial court has rightly fixed the negligence on the insurance company and hence the same need not be interfered with. In respect of quantum of compensation, the compensation awarded by the tribunal is just and reasonable. Therefore, he prayed for dismissal of the appeal.

11. Heard both sides and perused the entire materials available on record.

12. The manner of the accident and negligence are not in dispute. Admittedly, PW2 eye witness was examined by the claimant in order to disprove that no independent eye witnesses were examined by the appellant insurance company except the driver of the vehicle. Further, RW1 is not an eye witness. He is only an official of the insurance company. The tribunal fastened the entire liability on the driver of the car and insurance company i.e., on the appellant. Hence, this court is of the view that the fixation of negligence on the part of the driver of the car need not be interfered with.



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13. In respect of quantum of compensation awarded by the tribunal, admittedly, the accident happened in the year 2013. The respondent/claimant died in the year 2019 during the pendency of the appeal. DW3 was the disability certificate issued by Doctor. The claimant has not established before the tribunal that he suffered functional disability. In the absence of such pleading, the tribunal has awarded Rs.9,25,344/- by applying multiplier method which is not sustainable and the same is contrary to the decision reported by the Hon'ble Apex Court in the case of ***Rajkumar Vs Ajay Kumar reported in (2011) 1 SCC 343.*** The respondent/ claimant has not established before the tribunal that he suffered functional disability. Therefore, the compensation awarded under the head loss of income is hereby deleted.

14. As per the evidence of PW3 Doctor, the claimant had suffered disability of 36%, hence by awarding Rs.3,000/- per percentage of disability, this court awards Rs.1,08,000/- (Rs.3000 x 36) under the head loss of disability. In respect of pain and sufferings, this court is of the opinion that the amount awarded by the tribunal is very meagre and hence the same is enhanced to Rs.50,000/- from Rs.40,000/-. The compensation



awarded by the tribunal under other heads such as extra nourishment, attendant charges, transportation and medical bills seems to be just and proper, hence, the compensation awarded under such heads are hereby confirmed.

15. Accordingly, the modified compensation awarded by this Court is tabulated hereunder:

<i>S.NO.</i>	<i>Conventional Heads</i>	<i>Amount</i>
1.	Loss of Income 36 x 3000	Rs.1,08,000/-
2.	Pain and Sufferings	Rs. 50,000/-
3.	Extra Nourishment	Rs.30,000/-
4.	Attendant charges	Rs. 15,000/-
5.	Transportation	Rs. 15,000/-
6	Medical Bills	Rs.15,000/-
	Total	Rs.2,33,000/-

16. In the result,

- the Civil Miscellaneous is partly allowed. No costs.

Consequently, the connected CMP.No.1856 of 2020 is closed.

- The claimants/respondents are entitled to modified compensation amount of Rs.2,33,000/- awarded by this Court



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CMA.No.263 of 2020



along with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

- Accordingly, the Appellant/Insurance company is directed to deposit the modified compensation amount awarded by this court along with interest at the rate of 7.5% per annum, less the amount, if any, already deposited.
- On such deposit, the respondents 3 to 5/legal heirs of the deceased claimant are permitted to withdraw the modified compensation amount awarded by this court, less the amount, if any, already withdrawn, on making appropriate application before the trial court.

09.12.2024

msr
Index:yes/no
Internet:

To

The Motor Accident Claims Tribunal (II Additional District Judge)
Tiruppur

M. DHANDAPANI, J.

9/10



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CMA.No.263 of 2020

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