



C.M.A.No.36 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 12.06.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.36 of 2023

and

C.M.P.No.376 of 2023

United India Insurance Co. Ltd.,
Oriental Theatre Complex,
77, Arunachala Asari Street,
Salem – 636 001.

.. Appellant

Vs.

1.Thangaraj

2.Venkatesan

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.03.2015 made in M.C.O.P.No.71 of 2012 on the file of the Motor Accident Claims Tribunal, Sub Court at Mettur.

For Appellant : Ms.I.Malar
For RR 1 & 2 : No appearance

J U D G M E N T

The Insurance Company has filed the present appeal challenging the award passed by the Motor Accident Claims Tribunal, Sub Court,



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Mettur, in M.C.O.P.No.71 of 2012 dated 27.03.2015.

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2.The injured who is the claimant in this case has filed the claim petition on the ground that he was riding a two wheeler on 21.06.2012 at Tharamangalam – Chinnappampatty main road and at about 04.00 PM, when the vehicle approached Kalliyur pirivu road, the offending vehicle was driven by the 2nd respondent herein in a rash and negligent manner and it hit the two wheeler driven by the claimant as a result of which, the claimant fell down from the vehicle. The claimant sustained the following injuries:

(i)Left leg tibia fracture;

(ii)Two broken tooth.

The claimant underwent treatment in a private Hospital from 21.06.2012 to 28.06.2012. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal on considering the facts and circumstances and on appreciation of the oral and documentary evidence, came to a conclusion that the accident took place only due to the rash and negligent driving on the part of the offending vehicle. After having rendered such a finding,



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the Tribunal proceeded to fix the total compensation at Rs.5,50,254/-

under various heads as follows:

1.Loss of Earning Lump Sum	-	Rs.2,72,000/-
2.Pain & Suffering	-	Rs.80,000/-
3.Loss of Earning Treatment	-	Rs.25,000/-
4.Medical Expenses	-	Rs.77,254/-
5.Future Medical expenses	-	Rs.15,000/-
6.Loss of Enjoyment	-	Rs.38,000/-
7.Vehicle Damage	-	Rs.12,000/-
8.Nutrition	-	Rs.28,000/-
9.Transport	-	Rs.3,000/-

Rs.5,50,254/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

5.The Insurance Company aggrieved by the award passed by the Tribunal, has filed the present appeal before this Court.

6.Heard the learned counsel for the appellant. The name of the respondents 1 & 2 have been printed in the cause list and they neither appeared in person nor through counsel.



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7.The learned counsel for the appellant submitted that the riders of both the vehicles did not possess driving license and therefore, the Tribunal ought to have ordered for pay and recovery as against the owner of the offending vehicle. It was further contended that the Tribunal has not even discussed the manner in which a sum of Rs.2,72,000/- was assessed as a lumpsum amount and it is not clear as to whether the Tribunal applied the multiplier method or the per percentage method. It was further contended that the Tribunal had granted exorbitant amount under the head of pain and sufferings which also requires interference of this Court.

8.In so far as the driving license is concerned, the discussion made by the Tribunal on considering the evidence available on record shows that there was no indication that the rider of the offending vehicle had a valid driving license. In such a case, the Tribunal ought to have ordered for pay and recovery against the 2nd respondent herein.

9.In so far as the quantum of compensation is concerned, it is seen that two Doctors have given their certificate. The first Doctor has given a



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certificate for left leg tibia fracture and assessed the disability at 36%.

The second Doctor has given the certificate for teeth broken and assessed the disability at 30%. Certainly, the injuries sustained by the claimant has not resulted in any functional disability. Therefore, the multiplier method cannot be adopted in this case. Considering the fact that the accident had taken place in the year 2012, this Court is inclined to fix a sum of Rs.3,000/- per percentage of disability and the compensation under the head of disability is fixed at Rs.1,98,000/- (Rs.3,000/- X 66%).

10.In so far as the compensation granted under the head of pain and sufferings, the same is clearly on the higher side and considering the injuries sustained and the treatment underwent by the claimant, the compensation is reduced from Rs.80,000/- to Rs.25,000/-.

11.The compensation that has been fixed under other heads are reasonable and does not require the interference of this Court.

12.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

1.Disability - Rs.1,98,000/-



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2.Pain & Suffering	-	Rs.25,000/-
3.Loss of Earning Treatment	-	Rs.25,000/-
4.Medical Expenses	-	Rs.77,254/-
5.Future Medical expenses	-	Rs.15,000/-
6.Loss of Enjoyment	-	Rs.38,000/-
7.Vehicle Damage	-	Rs.12,000/-
8.Nutrition	-	Rs.28,000/-
9.Transport	-	Rs.3,000/-

Rs.4,21,254/-

13.In this case, the rider of the offending vehicle did not possess a valid driving license and therefore, the principle of pay and recovery should be applied. Hence, the modified compensation of Rs.4,21,254/- fixed by this Court to be paid with interest at the rate of 7.5% per annum can be recovered from the 2nd respondent herein.

14.In the result, the award passed by the Tribunal is modified and the total compensation fixed by the Tribunal at Rs.5,50,254/- is reduced to Rs.4,21,254/- with interest at the rate of 7.5% per annum. When this appeal was entertained, the appellant was directed to deposit 50% of the award amount along with accrued interest. Hence, the remaining amount



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shall be deposited with interest at the rate of 7.5% per annum within a period of four weeks from the date of receipt of a copy of this judgment and can be recovered from the 2nd respondent. The 1st respondent is entitled to withdraw the amount deposited by the appellant – Insurance Company. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed in the above terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Mettur.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

N.ANAND VENKATESH, J.



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