



C.M.A.(MD)No.669 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **28.08.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No. 669 of 2010
and M.P(MD)No.1 of 2010

The Divisional Manager,
The New India Assurance Co. Ltd.,
2nd Floor, Sosari Building,
61, Town Hall Road,
Madurai.

... Appellant/Respondent No.2

Vs.

1.Balakrishnan
2.A.J.M.Anand

...1st Respondent/Petitioner

...2nd Respondent/Respondent No.1

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.01.2010 passed in M.C.O.P.No.64 of 2005 on the file of the Motor Accident Claims Tribunal Judge (4th Additional District Sub Court), Madurai.

For Appellant : Mr.B.Vijay Karthikeyan
For R1 : Mr.Ramesh @ Ramaiah

JUDGMENT

The appeal is filed by the Insurance Company challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

2. The 1st respondent filed a claim petition stating that while he



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was travelling as a pillion rider in a motorcycle, the insured motorcycle bearing Reg.No. TN-58-D-3975 came from behind in a rash and negligent manner and dashed against the two-wheeler in which he was travelling, as a result of which, he fell down from the two-wheeler and sustained grievous injuries and a fracture to his right leg, an injury on right elbow and left eye.

3. The appellant filed a counter stating that the averment that the insured vehicle was involved in the accident was false; that the First Information Report lodged by the respondent two days after the occurrence stating that the registration number of the vehicle was TN-58 D-9317; hence, the claim petition is liable to be dismissed and in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

4. Before the Tribunal, the 1st respondent examined 6 witnesses as P.W.1 to P.W.6 and marked Ex.P.1 to Ex.P.15. The appellant examined R.W.1 and marked Ex.R.1 to Ex.R.4. The reports of the police were marked as Ex.C.1 and Ex.C.2.



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5. The Tribunal, after considering the oral and documentary evidence, held that the insured two-wheeler bearing Reg.No.TN-58-D-3975 was responsible for the accident; and that the appellant is liable to pay the compensation of Rs.68,200/- to the 1st respondent.

6. The learned counsel for the appellant submitted that the 1st respondent is an educated person and therefore, it cannot be said that he had erroneously stated the registration number of the vehicle; that the belated First Information Report and the belated report of the Motor Vehicle Inspector would all go to show that the claim is false; that in any case, the compensation awarded by the Tribunal is excessive and prayed for reduction.

7. The learned counsel for the 1st respondent/claimant, per contra, submitted that inadvertently the registration number of the vehicle was wrongly mentioned in the First Information Report; that subsequent investigation conducted by the police revealed the correct registration number; that the report of the Motor Vehicles Inspector and the report of the private agency employed by the appellant would all confirm that the accident is true and the insured vehicle was involved in the accident and



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that the compensation is just and reasonable. He would further submit that the Tribunal had erroneously not awarded the compensation towards medical expenses incurred by the respondent and also towards future medical expenses, likely to be incurred by the respondent and prayed for enhancement of compensation.

8. In reply, the learned counsel for the appellant submitted that in the appeal filed by the Insurance Company this Court may not enhance the compensation, especially, when the cross objection filed by the claimant was not pursued after filing of this appeal.

9. Heard both sides and perused the records.

10. The questions involved in the instant appeal are as follows:

- a) The finding of the Tribunal on negligence is in accordance with law?; and
- b) Whether the compensation awarded by the Tribunal is just and reasonable?



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11. As regards the first question, the admitted facts are that the respondent had given a complaint on 15.09.2003 though the accident took place on 13.09.2003. He had stated in the First Information Report that the registration number of the vehicle involved was TN-58-D-9317. However, the subsequent investigation revealed that the insured vehicle bearing Reg.No.TN-58-D-3975 was involved in the accident. Ex.P.2 final report of the police confirmed the said fact. Ex.P.4 the report of the Motor Vehicles Inspector also confirmed the involvement of the insured vehicle in the accident. The rider of the insured vehicle was charge sheeted before the learned Judicial Magistrate No.6, Madurai, for the offences punishable under Sections 279, 338 IPC. The rider had pleaded guilty before the learned Magistrate and a fine of Rs.800/- was imposed on him. In the report of the private agency employed by the appellant, which was marked as Ex.R.4, it is opined that the accident was true. Therefore, in such circumstances, this Court is of the view that the delay in lodging the First Information Report and the wrong mentioning of the registration number cannot be held against the 1st respondent. This Court is of the view that the insured vehicle was involved in the accident and the appellant, as the insurer, is liable to pay compensation.



12. As regards the quantum of compensation, it is seen that the 1st respondent had marked Ex.P.14 issued by P.W.4. As per the said disability certificate, the 1st respondent had suffered disability at 40%. However, the Tribunal had assessed the disability at 30% and awarded Rs.1,000/- for a percentage of disability. There is no infirmity in the said award of compensation. The award under the other conventional heads namely transport charges, loss of income and pain and suffering is just and reasonable and is confirmed.

13. However, it is seen that the Tribunal had awarded Rs.5,000/- towards extra nourishment and medical expenses put together. The claimant had marked Ex.P.7, the certificate issued by the private hospital, where surgery was conducted for treating the fracture suffered by the 1st respondent. Though initially the 1st respondent took treatment in the Government Hospital, according to the evidence of P.W.3, the doctor who conducted the surgeries in the private hospital later stated that the treatment given earlier was not effective. The hospital had issued a certificate, Ex.P.7 stating that the total expenses incurred by the 1st respondent was Rs.29,671.40/-. However, it is seen that the corresponding bills for the said amount have not been produced by the 1st



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respondent. At the same time, the claim of the 1st respondent is that money spent for the medical treatment cannot be rejected as has been done by the Tribunal. Considering the nature of injuries and the certificate Ex.P.7, this Court is of the view that the appellant would be entitled to Rs.20,000/- under the head medical expenses and future medical expenses put together.

14. Though this appeal is filed by the Insurance Company, this Court is bound to award the compensation just and reasonable. The compensation is modified as follows:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Amount Granted, Enhanced or Reduced</i>
1.	Transport Charges	1,000.00	1,000.00	Confirmed
2.	Extra Nourishment and Medical Expenses	5,000.00	5,000.00	Confirmed
3.	Pain and suffering	15,000.00	15,000.00	Confirmed
4.	Partial permanent disability	36,000.00	36,000.00	Confirmed
5.	Loss of income	11,200.00	11,200.00	Confirmed
6.	Medical Expenses and future medical expenses	Nil	20,000.00	Granted
Total :		68,200.00	88,200.00	Enhanced



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15. The appellant shall deposit the enhanced compensation with accrued interest at the rate of 7.5% p.a from the date of petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the 1st respondent/claimant is permitted to withdraw the same by filing a suitable application before the Tribunal. The 1st respondent/claimant shall pay the court fees for the enhanced amount.

16. In fine, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Motor Accident Claims Tribunal Judge (4th Additional District Sub Court), Madurai.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

CM

Judgment made in
C.M.A(MD)No. 669 of 2010
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