



C.M.A.(MD)No.784 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.784 of 2024

and

C.M.P.(MD)No.8612 of 2024

United India Insurance Company Limited,
Represented by Divisional Manager,
Divisional Office,
PPK Building 1st Floor, Main Road,
Marthandam Post,
Vilavancode Taluk,
Kanyakumari District.

...Appellant/Respondent No.4

Vs.

1.Latha	... Respondent No.1/Petitioner
2.Saju	... Respondent No.2/Respondent No.1
3.Arulldhas	... Respondent No.3/Respondent No.2
4.Ramesh	... Respondent No.4/Respondent No.3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 10.11.2022 in M.C.O.P.No.142 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kuzhithurai.



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For Appellant : Mr.I.Suthakaran

For Respondents : Mr.M.R.Sreenivasan (R1)

No appearance (R2 & R3)

JUDGMENT

This appeal has been filed by the Insurance Company challenging the finding on liability and quantum of compensation.

2. The first respondent filed a claim petition stating that while she was taking water from a tap in the street, a tempo insured with the appellant came in a rash and negligent manner, as a result of which, she sustained grievous injuries. The driver and the owner of the vehicle remained exparte before the Tribunal.

3. The appellant insurance company filed a counter stating that the accident did not take place due to the negligence of the tempo driver and that the insured vehicle was not driven in a rash and negligent manner and that the driver of the insured vehicle did not have any valid licence and that they are not liable to pay compensation and in any case, the compensation claimed was excessive.



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4. Before the Tribunal, the claimant examined P.W.1 to P.W.3 and marked Exs.P1 to P18. The appellant examined R.W.1 and R.W.2 and marked Exs.R1 to R6.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of the insured vehicle and directed the appellant insurance company to pay compensation at Rs. 4,70,865/-.

6. The learned counsel appearing for the appellant insurance company would submit that the appellant had established before the tribunal that the driver of the insured vehicle did not have any valid licence and the tribunal had not considered the said evidence and directed the appellant to pay the compensation; that the compensation towards disability by adopting the multiplier method is erroneous, as the first respondent/claimant has not established any functional disability and; that the compensation under other heads is excessive, and hence, he prayed for setting aside the award.



7. Per contra, the learned counsel appearing for the first respondent/claimant submitted that the compensation awarded by the Tribunal is just and reasonable and prayed for dismissal of the appeal. Though notice was sent to the owner of the vehicle, who is the third respondent herein, and his name is printed in the cause list, none has appeared on behalf of the third respondent.

8. The points for consideration in the instant appeal are as follows:

'a. Whether the finding on liability is justified?

b. Whether the quantum of compensation awarded by the Tribunal is just and reasonable?'

9. As far as the first point is concerned, it is seen that the appellant insurance company had examined RW1, Typist of the Regional Transport Office at Marthandam, who had deposed that their office had not issued any licence to the driver of the insured vehicle. The appellant insurance company had also marked the letter, Ex.R1, and the copies of the notices, Exs. R3 to R5, calling upon the owner, driver, and policyholder of the vehicle to produce the driving licence and they had not responded to the said notices. This Court is therefore of the view that the appellant



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insurance company had established before the Tribunal that the driver of the insured vehicle did not have any valid licence and hence, the Tribunal ought to have directed the appellant to pay the award amount and recover the same from the owner of the vehicle, the third respondent herein. Point No. 1 is answered accordingly.

10. As regards the quantum of compensation is concerned, admittedly the disability suffered by the first respondent /claimant is 10%, as per Ex.P12 issued by PW3, Doctor, who had treated the appellant, and the injuries suffered by the first respondent /claimant are listed out in Ex.P4 issued by the certificate, which shows that the first respondent /claimant had suffered open grade III comminuted fracture both boes M/3 (R) with contused circumferential soft tissue, abrasion (L) knee, and abrasion hypochondriac region.

11. The first respondent /claimant has not established that she suffered any functional disability due to the injuries suffered by her. In such circumstances, this Court is of the view that the compensation awarded by the Tribunal towards disability by adopting multiplier is unwarranted. The accident took place in the year 2015, and hence, the



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first respondent /claimant is entitled to compensation of Rs. 5,000/- for a percentage of disability and hence, this Court is of the view that a sum of Rs. 50,000/- can be granted under the head of disability instead of Rs. 1,15,200/- granted by the Tribunal under the head compensation for injuries.

12. The award under the head of pain and sufferings at Rs. 1,50,000/- is modified as towards loss of pain and sufferings and loss of amenities for a sum of Rs. 75,000/- under each head. The transport expense is reduced to Rs. 10,000/-, as there is no evidence to show that the first respondent/claimant had spent Rs. 25,900/- awarded by the Tribunal by filing any documentary evidence. The claimant had established that she was working as a housemaid and could not pursue the work for a period of three months. Hence, by fixing a notional income at Rs. 7,000/- per month, a sum of Rs. 21,000/- can be awarded under the head of loss of income for three months. The compensation awarded by the Tribunal under the other heads is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed, enhanced or granted
1	Compensation for injuries (Disability)	1,15,200	---	Rejected
2	Disability	---	50,000	Granted
3	Pain and Sufferings	1,50,000	75,000	Reduced
4	Loss of amenities	---	75,000	Granted
5	Medical Bills	1,39,765	1,39,765	Confirmed
6	Nutrition expenses	20,000	20,000	Confirmed
7	Attender Expenses	20,000	20,000	Confirmed
8	Transport Charges	25,900	10,000	Reduced
9	Loss of income	---	21,000	Granted
Total		Rs.4,70,865	Rs.4,10,765	Reduced by Rs.60,100/-

13. The appellant insurance company is directed to pay the compensation of Rs. 4,10,765/- (Rupees four lakhs ten thousand seven sixty-five only) together with interest at 7.5% p.a., from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order, at the first instance and thereafter, recover it from the third respondent herein in accordance with law.

14. On such deposit, the first respondent /claimant is permitted to withdraw the award amount, with proportionate interest and costs, less



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the amount already withdrawn, if any, by filing an appropriate application before the Tribunal.

15. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs. Consequently, connected miscellaneous petition is closed.

24.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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TO:-

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- 1.The Motor Accident Claims Tribunal, Subordinate Judge,
Kuzhithurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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Judgment made in
C.M.A(MD)No.784 of 2024

Dated:
24.10.2024