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C.M.A(MD)No.721 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.07.2024

Pronounced on : 24.09.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

C.M.A(MD)No.721 of 2023

and

C.M.P(MD)No.9906 of 2023

and

Cros.Obj(MD)No.37 of 2023

C.M.A(MD)No.721 of 2023

The United India Insurance Company Limited,
representing through the Branch Manager,
KAR Towers, II Floor, R.S.Road,
Dindigul.

... Appellant / 2nd Respondent

Vs.

1.K.Mani @ Manivannan

... 1st Respondent / Claimant

2.R.Dhanasekar

... 2nd Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the judgment and decree passed in M.C.O.P.No.45 of 2019 dated 07.12.2021 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court (to deal with MCOP Cases), Dindigul.



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For Appellant : Mr.J.S.Murali
For R1 : Mr.K.Kumaravel
For R2 : No appearance

Cros.Obj(MD)No.37 of 2023

1.K.Mani @ Manivannan ... Cross Appellant / 2nd Respondent

Vs.

1.The United India Insurance Company Limited,
representing through the Branch Manager,
KAR Towers, II Floor, R.S.Road,
Dindigul. ... 1st Respondent / Appellant

2.R.Dhanasekar ... 2nd Respondent / 2nd Respondent

PRAYER :-

This Cross Objection is filed under Order 41 Rule 22 of C.P.C., in C.M.A(MD)No.721 of 2023 filed as against the judgment and decree in M.C.O.P.No.45 of 2019 dated 07.12.2021 on the file of Motor Accident Claims Tribunal / Special Subordinate Court to deal with MCOP Cases, Dindigul).

For Cross Appellant : Mr.K.Kumaravel
For R1 : Mr.J.S.Murali
For R2 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the judgment and decree passed in M.C.O.P.No.45 of 2019 dated 07.12.2021 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court (to deal with MCOP Cases), Dindigul.

2. The case of the claimant is that on 31.10.2018 at about 8.30 p.m., the petitioner was travelling as a passenger in a share auto bearing registration number TN 57 AS 8380 on the Sathampatti road. When the share auto was nearing the place of occurrence, the driver drove the same in a rash and negligent manner and suddenly applied the brake. As a result of which the petitioner was thrown out and his right leg was broken. He suffered other multiple injuries also. He was taken to Natham Government Hospital later shifted to the Government Rajaji Hospital, Madurai and took treatment as inpatient from 01.11.2018 to 24.11.2018. He underwent surgery and fitted with screw and plate. He was earning about Rs.35,000/- by working in Jeyaram bus company as a driver apart from that milk vending business, agriculture etc. Because of the accidental injuries, he was unable to do the



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work as before. Claiming compensation amount of Rs.25 Lakhs, the claim application was filed.

3. That was resisted by the insurance company by filing counter stating that he suffered injuries because of his own negligence for which the first respondent cannot be held responsible.

4. Regarding the first aspect of negligence, the Tribunal recorded a finding that the accident took place because of the rash and negligent driving on the part of the first respondent vehicle driver. Regarding the compensation amount, on the basis of the certificate issued by the medical board, it assessed the partial permanent disability at 15%. Adopted multiplier method stating that it is a functional disability and took Rs.18,000/- as monthly income total loss amount of income was fixed at Rs.4,86,000/- to that other conventional amounts were added and finally the following amount was ordered:

Particulars	Amount
For Future loss of income and disability	Rs.4,86,000/-
Medical Expenses	Rs. 1,548/-



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Transportation Charges	Rs. 3,000/-
Extra Nourishment	Rs. 5,000/-
Damages to clothing and articles	Rs. 2,000/-
Pain and Sufferings	Rs. 20,000/-
Attender Charges	Rs. 3,000/-
Loss of Amenities	Rs. 15,000/-
Total	Rs.5,35,548.00/- rounded off to Rs.5,35,550/-

5. Challenging the same, the insurance company is before this Court by filing this appeal.

6. The claimant has filed a Cross Objection by stating that the Medical Board has assessed the disability at 15%. The claimant suffered functional disability. Therefore, the Tribunal would have taken 100% of disability in calculating the compensation. Further, the claimant was treated as inpatient from 01.11.2018 till 24.11.2018. Therefore, the compensation awarded under the heads of Transport charges, Extra Nourishment, Pain and Sufferings, Attender Charges and Loss of amenities have to be enhanced.



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7. Learned counsel for the appellant would submit that the multiplier method adopted by the Tribunal is not proper and other conventional heads were fixed in excess.

8. Per contra, learned counsel for the respondent / claimant would submit that there was proper driving license for the first respondent. Disability occurred on the forehead region and he was removed from the job because of the accidental injuries.

9. Per contra, learned counsel for the appellant would submit that as per the medical records, no fractural injury was found. Only quantum is in dispute and not the negligence.

10. The manner of accident itself does indicate the rash and negligence of the first respondent. That part of the finding of the Tribunal requires no interference. Regarding the two aspect of fixation of compensation, the nature of injuries suffered by the claimant and the consequential disability is the guiding and deciding factor. As mentioned above, it is the case of the



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claimant that because of the accidental injuries he was removed from the job.

Ex.P14 is the disability certificate issued by the Medical Authority, Medical Board, Dindigul Government Hospital, wherein we find that there was a fracture on the right shaft bone but now it is found united. So the partial permanent disability was fixed at 15%. But the Tribunal thought it fit to adopt multiplier method for assessing the compensation towards the disability. As noted above, there is no evidence on record to show that because of the accidental injuries, the claimant was permanently disabled and removed from the employment. In the absence of any such evidence on record, the multiplier method adopted by the Tribunal for assessing the loss of earning capacity is not proper. Only percentage basis of assessment will be proper.

11. Considering the above, there is a fracture on the right femour bone so loco motor disabilities are also noticed, therefore, granting Rs.5000/- per percentage of disability, will meet the ends of justice. Therefore, for disability Rs.75,000/- (15 x 5000) is fixed. Medical expenses which is supported by documentary evidence which is arrived at Rs.1,548/-. Transport charges can be raised to Rs.5000/-. Extra nourishment is reasonably fixed as 5,000/-.



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Damage to cloths and articles is also reasonably fixed at Rs.2,000/-. Pain and Sufferings must be raised to Rs.25,000/-. Attendant charges is fixed at Rs.3,000/- which is maintained. Loss of amenities is fixed at Rs.15,000/- which is also reasonable. Therefore, the compensation is reduced as follows:

Particulars	Amount
For Future loss of income and disability	Rs. 75,000/-
Medical Expenses	Rs. 1,548/-
Transportation Charges	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-
Damages to clothing and articles	Rs. 2,000/-
Pain and Sufferings	Rs. 25,000/-
Attender Charges	Rs. 3,000/-
Loss of Amenities	Rs. 15,000/-
Total	Rs.1,31,548/- rounded off to Rs.1,31,000/-

12. The Civil Miscellaneous Appeal is partly allowed and the Cross Objection is dismissed. The award passed by the Tribunal is modified as follows:



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(i) The quantum of compensation awarded by the Tribunal is reduced to ***Rs.1,31,000/- (Rupees One Lakh Thirty One Thousand only)*** with interest at the rate of 7.5% per annum.

(ii) The appellant / insurance company is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.45 of 2019 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court (to deal with MCOP Cases), Dindigul, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited.

(iii) On such deposit being made, the first respondent / claimant is at liberty to withdraw the compensation amount, after following the due process of law, less any amount already received by them.

(iv) No costs. Consequently, connected miscellaneous petition stands closed.

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NCC: Yes / No

Index: Yes / No

Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal / Special Subordinate Judge
(to deal with MCOP Cases), Dindigul.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.

Pre-Delivery Judgment made in
C.M.A(MD)No.721 of 2023
and
C.M.P(MD)No.9906 of 2023
and
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