



C.M.A(MD)No.1110 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN

C.M.A(MD)No.1110 of 2022
and
C.M.P(MD)No.11314 of 2022

National Insurance Company Limited,
Branch Office-I,
No.33, Promenade Road,
Cantonment,
Trichy- 620 001.

... Appellant/2nd Respondent

Vs.

1.R.Ravichandran

... 1st Respondent/Petitioner

2. M.Ravikumar

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and decree passed in M.C.O.P.No.78 of 2020 dated 06.04.2022 on the file of the Motor Accident Claims Tribunal, Third Additional Subordinate Court, Trichirappalli and allow the Appeal with costs.



C.M.A(MD)No.1110 of 2022

For Appellants : Mr.J.S.Murali
For Respondents : Mr.D.Boopal, for R1
: No appearance for R2

JUDGMENT

[Judgment of the Court was made by **V.BHAVANI SUBBAROYAN.J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal, III Additional Subordinate Court, Trichirappalli, in M.C.O.P.No.78 of 2020, dated 06.04.2022, the Insurance Company has filed this appeal.

2. The learned counsel appearing for the Insurance Company confined his arguments relating to the “negligence and quantum”.

3.The claimant filed a claim petition in M.C.O.P.No.78 of 2020, on the file of the Motor Accident Claims Tribunal, III Additional Subordinate Court, Trichirappalli, claiming compensation of a sum of Rs.5,00,000/- (Rupees Five Lakhs only) for the injury sustained by one R.Ravichandran in the accident that occurred on 09.07.2018. Vide the



C.M.A(MD)No.1110 of 2022

impugned award, dated 06.04.2022, the Tribunal awarded a sum of Rs.23,23,039/- (*Rupees Twenty Three Lakhs Twenty Three Thousand and Thirty Nine only*) as compensation.

4.Facts of the Case:-

According to the claimant, on 09.07.2018 at about 05.00 p.m., while the injured namely R.Ravichandran was driving the two wheeler bearing Registration No.TN 48 AU 1644 from South to North direction on the left side of the road, a Tractor, bearing Registration No.TN 47 Y 7301 driven in a rash and negligence manner from west to east direction, suddenly dashed the two wheeler, due to which, the two wheeler rider sustained fracture in right shoulder and left leg, and grievous injury all over the body. After the accident, first aid treatment was taken in Thottiyam Government Hospital. Subsequently, he underwent further treatment from 10.07.2018 to 11.07.2018. Thereafter, he was admitted in Trichy SRM Medical College Hospital from 10.07.2018 to 12.09.2018, and surgery was done on 27.08.2018. Based on the complaint, a case was registered in Cr.No.187 of 2018 by the Thottiyam Police Station.



C.M.A(MD)No.1110 of 2022

5.The appellant Insurance Company filed a counter statement denying all the averments made in the claim petition. The appellant Insurance Company disputed the monthly income and also other aspects and hence, he prayed for dismissal of the claim petition.

6.Before the Tribunal, to prove the case of the claimant, P.W.1 was examined and marked Ex.P1 to Ex.P7 and marked Court document as Ex.C1. On the side of the respondents R.W.1 and R.W.2 were examined and Ex.R1 and was marked.

7.Findings of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the second respondent and directed the appellant /insurance company to pay a sum of Rs.23,23,039/- (*Rupees Twenty Three Lakhs Twenty Three Thousand and Thirty Nine only*) as compensation to the claimant under the following heads:



C.M.A(MD)No.1110 of 2022

Sl. No.	Heads	Amount awarded by the Tribunal (in Rupees)
1	For Disability(part and permanent) and Loss of Income	17,47,200/-
2	Medical Expenses	1,95,839/-
3	Loss of pain and suffering	1,50,000/-
4	Loss of lack of comfortable	1,00,000/-
5	Future Medical Expenses	50,000/-
6	Nutrition Food	30,000/-
7	Assistant Expenses	25,000/-
8	Transport Expenses	20,000/-
9	Loss of Estate	5,000/-
Total		Rs.23,23,039/-

Aggrieved against the said award dated 06.04.2022 on the negligence aspect, the appellant Insurance Company has filed the present appeal.

8.Submission of the learned counsel for the appellants:

The learned counsel appearing for the appellant Insurance Company submits that the Tribunal failed to consider that the accident occurred due to the negligence of the deceased. He also disputes the monthly income of the deceased. The tribunal in any event, has to deduct some major percentage of contributory negligence on the part of the claimant for drunken driving and causing the accident. The Tribunal



C.M.A(MD)No.1110 of 2022

failed to award Rs.50,000/- towards future medical expenses without the examination of the Doctor and the same cannot be sustained. Further, the Tribunal has awarded a total compensation for Rs.23,23,039/-, even though a claim of Rs.5,00,000/- was only made by the claimant before the claims Tribunal.

9.Submission of the learned counsel for the claimant:

Per contra, the learned counsel appearing for the respondents / claimant submits that the learned Tribunal, after considering the materials and the oral evidence, held that the accident happened only because of the negligence of the driver of the Tractor, the injured sustained several fractures in his body and he was admitted as inpatient for more than 65 days and was assessed with 80% of disability and as per the law laid down by the Hon'ble Supreme Court in the case of *Sarla Varma vs. Delhi Transport Corporation* reported in *2009 (6) SCC 121*, the Tribunal has correctly awarded the compensation and hence, he seeks for dismissal of this appeal by disputing the averments made by the appellant insurance company.



10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the respondents and also perused all the materials available on record.

11. The following point arise for consideration of this appeal:

Whether the appellant insurance company made out the case for reduction for compensation granted by the impugned award?

12. Discussion on the negligence:

The claimant was examined as P.W.1. Where the claimant stated that, on 09.07.2018, he was driving a two wheeler, at the time (5:00pm) and the second respondent was driving the vehicle in a rash and negligent manner and consequently, the accident occurred. Subsequently, FIR was registered against the second respondent. As per Ex.P.2, the claimant had consumed alcohol at the time of accident. During cross examination, the claimant stated that he has not consumed alcohol. However, while at the time of accident, consumed only cough syrup. In view of the above discussion, the second respondent driven the vehicle in a rash and negligence manner, and caused the accident. The involved vehicle was



insured with the appellant insurance company and hence the appellant insurance company is responsible and liable to pay the compensation.

13.Discussion on the quantum:

On the point of quantum of compensation, it is seen that the claimant was working as a chef (Master) and aged about 43 years and was earning a sum of Rs.800 as daily wages. No evidence was produced in this regard. Therefore, Tribunal fixed Rs.10,000/- as monthly notional income.

13.1.The Tribunal has awarded a sum of Rs.1,50,000/- towards loss of pain and suffering which is exerssive and thus, the same is reduced to Rs.1,00,000/-. Further, a sum of Rs.1,00,000/- under the head of Loss of lack of comfortable is reduced to Rs.50,000/-. The amount awarded under the heads of Future Medical Expenss, Assistant Expenses and Transport as Rs.50,000/-, Rs.25,000/- and Rs.20,000/- were exorbitant and therefore, this Court is inclined to reduce it to Rs.30,000/-, Rs.15,000/- and Rs.15,000/- respectively.



C.M.A(MD)No.1110 of 2022

13.2. The learned Tribunal Judge also awarded Rs.17,47,200/- towards disability and loss of income and Rs.1,95,839/- for the Medical expenses Rs.30,000/- for Nutrition Food and Rs.5,000/- for the Loss of Estate to the claimant.

13.3. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

14.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rupees)</i>	<i>Award amount Redetermined by this Court</i>	<i>Status</i>
1	For Disability(part and permanent) and Loss of Income	17,47,200/-	17,47,200/-	confirmed
2	Medical Expenses	1,95,839/-	1,95,839/-	confirmed
3	Loss of pain and suffering	1,50,000/-	1,00,000/-	reduced
4	Loss of lack of comfortable	1,00,000/-	50,000/-	reduced



C.M.A(MD)No.1110 of 2022

5	Future Medical Expenses	50,000/-	30,000/-	reduced
6	Nutrition Food	30,000/-	30,000/-	confirmed
7	Assistant Expenses	25,000/-	15,000/-	reduced
8	Transport Expenses	20,000/-	15,000/-	reduced
9	Loss of Estate	5,000/-	5,000/-	confirmed
Total		Rs.23,23,039/-	Rs.21,88,039/-	Reduced

15. In view of the above, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded in M.C.O.P.No.78 of 2020 on the file of the Motor Accident Claims Tribunal, III Additional Subordinate Court, Trichirappalli, dated 06.04.2022, is hereby modified and the award is reduced from Rs.23,23,039/- to Rs.21,88,039/-. Therefore, the claimant is entitled to a sum of **Rs.21,88,039/-** with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization. The appellant insurance company is directed to deposit the award amount, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is permitted to withdraw the entire award amount, with accrued interests and costs. The insurance company is permitted to withdraw the remaining amount. No costs. Consequently, connected miscellaneous



C.M.A(MD)No.1110 of 2022

petition is closed.

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(V.B.S.J.,) (K.K.R.K.J.,)
19.03.2024

Index :Yes/No
Internet :Yes/No
sbn

To

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



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C.M.A(MD)No.1110 of 2022

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