



C.M.A(MD)No.593 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 11.06.2024

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THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD)No.593 of 2022

M/s. Royal Sundaram General Insurance Co. Ltd.,
Through its Branch Manager,
Office at, TVS Co-operative Store Building,
No.37, Krishna Rao Tank Street,
Madurai.

... Appellant / Respondent No.2

Vs.

1.Ramamoorthy

... 1st Respondent / Claimant

2.L.Sankar

... 2nd Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to set aside the fair and decreetal order dated 10.12.2018 made in M.C.O.P.No.04 of 2016 on the file of the Motor Vehicles Accident Claims Tribunal Subordinate Judge, Aruppukottai and allow this appeal.

For Appellant : Mr.M.Jerin Mathew

For R1 : Mr.M.Jothi Basu



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JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the fair and decreetal order dated 10.12.2018 made in M.C.O.P.No.04 of 2016 on the file of the Motor Vehicles Accident Claims Tribunal Subordinate Judge, Aruppukottai.

2. The facts in brief is that on 06.06.2015, at about 5.45 p.m., the petitioner was going to his work place by a bicycle at Palayampatti bye-pass road, left side of the Madurai to Aruppukottai Main Road. The vehicle bearing registration No.TN58 AB 2823 was driven by its driver in a rash and negligent manner and hit him behind. As a result of which, the petitioner fell down and sustained injuries all over the part of the body. He was taken to a private hospital and admitted as inpatient. Later he took treatment from 06.06.2015 to 22.06.2015 as inpatient. A case in Crime No.476 of 2015 was also registered. The driver of the vehicle admitted the guilt and paid a sum of Rs.1,000/- as fine in S.T.C.No.673 of 2015, before the learned Judicial Magistrate, Aruppukottai. Claiming compensation amount of Rs.10 Lakhs, the petition was filed. That was resisted by the appellant / insurance company



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stating that the petitioner suddenly crossed the road without minding the traffic and invited the accident. So, the driver of the four wheeler was no way responsible for the occurrence and other customary denials were made.

3. Before the Tribunal, on the side of the claimant, he himself was examined as P.W.1 and eleven documents were marked and on the side of the insurance company, none was examined and no document was marked. At the conclusion of the enquiry, the Tribunal found that the occurrence took place because of the rash and negligent driving on the part of the first respondent driver. Therefore, the Tribunal awarded compensation of Rs.7,56,410/- with interest at the rate of 9.5% per annum.

4. Challenging the quantum and the rate of interest awarded by the Tribunal, the Insurance Company has filed this Civil Miscellaneous Appeal before this Court.

5. Heard both sides.



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6. Since it is a case of admission of guilt by the first respondent vehicle driver and since no argument was also advanced by the appellant, no discussion is required on the aspect of liability. This Civil Miscellaneous Appeal is filed only questioning the quantum of compensation.

7. The petitioner was a Security, aged about 62 years at the time of accident. He is earning Rs.16,000/- per month. Since it was supported by documentary evidence, his monthly earning was fixed as Rs.16,000/-. He was inpatient for about 17 days. So the loss of earning was estimated at Rs.10,000/-, which is not disputed by the insurance company. The transport expenses is fixed at Rs.28,000/- on the basis of Ex.P10, the Taxi Trip Sheet. So that amount was also not disputed by the insurance company. Considering the nature of injury suffered, for extra nourishment Rs.3,000/- is fixed and for damage to the cloth and articles Rs.1,000/- is fixed, respectively. As per the hospital documents and the medical bills marked as Ex.P9, the medical expenses was fixed at Rs.27,330/- which was also not disputed. Regarding the injuries on the basis of the disability certificate and Ex.C1 which was issued by the Medical Board, Government Head Quarters Hospital,



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Virudhunagar, it was assessed 32%. Since it was submitted by the Medical Board report, it was taken as 32% and Rs.3,000/- was awarded per percentage since considering the fact that there was no functional disability. Therefore, the same is arrived at Rs.96,000/-(3000 x 32). Therefore, that portion of the order also not challenged and the same is confirmed. The problem lies in the excessive compensation awarded under the heads of future medical expenses, pain and sufferings, loss of amenities and loss of future prospects.

8. Reading of the order passed by the Tribunal shows that for each and every category it was referring to some judgment either of the High Court or of the Hon'ble Supreme Court. Such a manner of assessment of compensation may not be proper. Each and every case has its own merits. The nature of injury is a deciding factor and the disability. On what basis those amount were fixed by the Tribunal as mentioned, is also not proper. When there is no loss of earning capacity and there is no evidence to prove that subsequent to the occurrence, he was removed from the employment, the Tribunal ought not to have awarded compensation for loss of future prospects. Reasonable compensation must be refixed by this Court in view of the above said.



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9. Therefore, compensation fixed as Rs.20,000/- under the head of pain and sufferings, is reasonable, by considering the days of treatment and nature of injury. For loss of amenities, Rs.10,000/- is fixed. Since compensation is awarded on the basis of the percentage of disability, a separate category of loss of amenity does not arise. Compensation awarded for loss of amenities is removed. For pain and sufferings, Rs.1 Lakhs was ordered and the same is reduced to 25,000/-. Loss of future prospects is also removed. The award is recalculated as under:

Sl. No.	Description	Award of the Tribunal	Award of this Court
1.	For Loss of Earning	Rs. 10,000/-	Rs. 10,000/-
2.	For Transport Expenses	Rs. 28,000/-	Rs. 28,000/-
3.	For Extra Nourishment	Rs. 3,000/-	Rs. 3,000/-
4.	For Damage to Cloth and Article	Rs. 1,000/-	Rs. 1,000/-
5.	For Medical Expenses	Rs. 27,330/-	Rs. 27,330/-
6.	For Future Medical Expenses	Rs. 50,000/-	---
7.	For other expenses	Rs. 1,000/-	---
8.	For Partial Permanent Disability	Rs. 96,000/-	Rs. 96,000/-
9.	For Pain and Sufferings	Rs. 1,00,000/-	Rs. 25,000/-
10.	For Loss of Amenities	Rs. 10,000/-	---



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11.	For Loss of Future Prospects	Rs. 4,30,080/-	---
	Total	Rs. 7,56,410/-	Rs. 1,90,330/-

Therefore, the award of the Tribunal is reduced to Rs.1,90,330/-. Regarding the rate of interest, the Tribunal has awarded 9.5% per annum. Usually 7.5% is awarded in such matters. So the rate of interest is also modified to 7.5% per annum.

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.7,56,410/- to Rs.**1,90,330/-** (Rupees One Lakh Ninety Thousand Three hundred and Thirty only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.**1,90,330/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.04 of 2016 on the file of the Motor Vehicles Accident Claims Tribunal Subordinate



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Judge, Aruppukottai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant /insurance company, the claimant is permitted to withdraw the amount as per the order of the Tribunal.

(iv) The appellant is entitled for the excess amount if any paid already.

11.06.2024

NCC: Yes / No
Index: Yes / No
Internet : Yes / No

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To

1. The Motor Vehicles Accident Claims Tribunal Subordinate Judge, Aruppukottai.
2. The Section Officer, Vernacular Records Section, Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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