



C.M.A.(MD)No.1175 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : **19.09.2024**

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A(MD)No.1175 of 2018
and C.M.P(MD)No.12113 of 2018

The United India Insurance Company Ltd.,
Door No.111/2,
K.T.C. Complex,
New Scheme Road,
Pollachi

...Appellant/3rd Respondent

Vs.

1.N.Anandakumar
2.S.Sakthivel
3.P.Kanagaraj

..1st Respondent/Petitioner

...Respondents 2 & 3/Respondents 1 &2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award dated 06.02.2018 passed in M.C.O.P.No.89 of 2008 on the file of the Motor Accident Claims Tribunal cum Sub Court, Palani.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.D.Venkatesh

For R3 & R4 : Given up



JUDGMENT

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The instant appeal has been filed challenging the quantum of compensation awarded by the Tribunal.

2. The respondent No.1/claimant filed a claim petition stating that while he was travelling in a motorcycle as a pillion rider, a lorry insured with the appellant came in a rash and negligent manner from the opposite direction and dashed against the motorcycle, as a result of which, he sustained grievous injuries.

3. The owner of the lorry/2nd respondent herein filed a counter denying the averments in the claim petition and stated that in any case, the compensation claimed was excessive.

4. The appellant filed a counter reiterating the averments made by the owner of the lorry and stated that the compensation claimed was excessive.

5. Before the Tribunal, the claimant examined himself as P.W.1 and the doctor, namely, Shanmugarajan, as P.W.2 and marked Ex.P.1 to Ex.P.



11. The appellant neither examined witnesses nor marked documents.

The disability certificate was marked as Ex.C.1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, awarded a total compensation of Rs.4,77,180/-

7. The learned counsel for the appellant submitted that in the absence of any evidence suggesting functional disability, the Tribunal ought not to have adopted the multiplier method; and that the compensation under the other heads is also excessive.

8. The learned counsel for the respondent No.1/claimant, per contra, submitted that the claimant had established before the Tribunal that he was working as a goldsmith; that due to the accident, he could not work for long hours and his working hours were reduced considerably; that therefore, the Tribunal has rightly adopted the multiplier method to grant compensation under the head 'loss of income'; that the award of compensation under the other conventional heads is also meagre; and prayed for dismissal of the appeal.



9. This Court has given its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. The point for consideration in the instant appeal is as follows:

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

11. The 1st respondent/claimant had examined himself as P.W.1 and the doctor as P.W.2, who had deposed that the claimant had suffered fractures in his right tibia and fibula bones. The doctor, P.W.2, had deposed that due to the accident, the claimant was unable to rotate his knees normally and therefore, he had assessed the disability at 30%. From the evidence of P.W.1 and P.W.2, this Court finds that there is nothing to infer that the claimant had suffered any functional disability. In the absence of any evidence to show that the claimant had suffered any functional disability, this Court is of the view that the Tribunal ought not to have adopted the multiplier method. However, the claimant is entitled to compensation under the head 'disability' by adopting the percentage method. The claimant had admittedly suffered 30% disability. Considering the year of the accident, a sum of Rs.3,000/- can be awarded



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for a percentage of disability. Therefore, a sum of Rs.90,000/- is awarded for 'disability' instead of Rs.3,06,000/- awarded under the head loss of income by taking the disability at 30%.

12. As regards the compensation under the head 'pain and suffering', the nature of injuries, the period of treatment and the nature of surgeries have to be considered. Considering the same, the compensation awarded under the head 'pain and suffering' can be enhanced to Rs.50,000/-. The Tribunal has not awarded compensation under the head 'loss of amenities'. This Court grants Rs.50,000/- under the said head in the facts and circumstances of the case.

13. As per the certificate issued by the Doctor, during the surgery performed for treating the fracture suffered by the claimant, plate and screws were fixed and approximately Rs.1 lakh would be necessary for the removal of the plate screws. Considering the nature of surgeries and the treatment taken, this Court is of the view that a sum of Rs.50,000/- can be granted under the head 'for future medical expenses'. Further, the Tribunal has awarded Rs.10,000/- each for transport charges and extra nourishment. This Court is of the view that a sum of Rs.15,000/- each



can be granted under the said heads. Thus, the award of compensation is modified as follows:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Award confirmed or enhanced or granted</i>
1.	Loss of income	3,06,000.00	Nil	Deleted
2.	Disability	Nil	90,000.00	Granted
3.	Pain and suffering	25,000.00	50,000.00	Enhanced
4.	Extra nourishment	10,000.00	15,000.00	Enhanced
5.	Loss of damages to clothes	5,000.00	5,000.00	Confirmed
6.	Transport Charges	10,000.00	15,000.00	Enhanced
7.	Medical Expenses	1,21,180.00	1,21,180.00	Confirmed
8.	Loss of Amenities	Nil	50,000.00	Granted
9.	Future Medical expenses	Nil	50,000.00	Granted
Total :		4,77,180.00	3,96,180.00	Reduced

14. The appellant is directed to deposit the modified compensation with accrued interest within a period of four weeks from the date of receipt of a copy of this judgment after deducting the amount already deposited. On such deposit, the claimant is permitted to withdraw the amount by filing a suitable application. If the appellant has deposited any excess amount, it is open to them to file an application seeking refund of the excess amount before the Tribunal.



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15. In fine, this appeal is partly allowed. No costs. Consequently,
the connected miscellaneous petition is closed.

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

1.Motor Accident Claims Tribunal cum Sub Court, Palani.

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.1175 of 2018
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