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CMA.No.679 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.679 of 2022 and
CMP No.4865 of 2022

The Branch Manager,
M/s United India Insurance Company Ltd.,
E-11, SIDCO Industrial Estate,
Near Bye-pass, Rayakottai Fly Over,
Krishnagiri.

... Appellant

Vs.

1.Venkataramanappa

2. Murugan

3. The Branch Manager,
The Krishnagiri Urban Co-op Town Bank Ltd.,
Rep. by its Branch Manager, No.87/42,
Nethaji Road, Oldpet,
Krishnagiri Town, Taluk & District.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the award and decree dated 06.10.2020 made in MCOP No.40 of 2019 on the file of the Additional Subordinate Judge, Motor Accidents Claims Tribunal, Hosur.



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For appellant : Mr.S.Arun Kumar
For Respondent : Mr.D.Ramesh Kumar for 1st respondent
Mr.A.R.Dalani Saami for 2nd respondent
Mr.V.Nicholas for 3rd respondent

JUDGMENT

This appeal has been filed by the insurance company challenging the award passed by the Tribunal.

2. The first respondent herein filed a claim petition seeking compensation of Rs.10,00,000/- for the injury sustained by him in a road accident that had taken place on 23.12.2016. It was the case of the claimant before the Tribunal that he was travelling as a pillion rider in a motorcycle driven by one Govindappa. A Mahindra Bolero car belonging to the third respondent, insured with the appellant/ insurance company was driven by its driver, second respondent herein in a rash and negligent manner and dashed against the two wheeler. As a result of accident, the first respondent/claimant fell down and sustained injuries. Hence, he laid a claim petition seeking compensation.



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3. Before the Tribunal, the appellant/ insurance company filed its counter denying the manner of accident as averred in the claim petition. It was the case of the insurance company that the two wheeler came in a wrong direction and dashed against the car belonging to the third respondent, insured with the appellant. It was also claimed by the appellant that the owner and insurer of the two wheeler were necessary parties to the claim petition and since they were not impleaded in the claim petition, the same should be dismissed on the ground of non joinder of necessary parties.

4. The Tribunal based on the evidence available on records came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the car, insured with the appellant/ insurance company and quantified the compensation at Rs.7,08,283/-. Aggrieved by the same, the insurance company has filed the present appeal.



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5. The learned counsel for the appellant/insurance company would submit that the accident had occurred wholly due to the negligence on the part of the driver of the two wheeler and hence, the Tribunal committed a serious error in fixing the negligence on the part of the driver of the vehicle insured with the appellant. He further submits that the compensation quantified by the Tribunal is excessive one and the same needs to be interfered with.

6. The learned counsel for the first respondent/ claimant would submit that the Tribunal by taking into consideration the evidence of PW1 and Ex.P1 - FIR, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the car and hence, the same does not warrant any interference by this court. He further submits that the notional income fixed by the Tribunal for the purpose of calculating compensation under disability, by adopting multiplier method is very much on lower side and therefore, the quantum of compensation awarded by the Tribunal cannot be said to be excessive.



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7. Before the Tribunal, in order to prove the negligence aspect, the claimant was examined as PW1. The FIR filed against the driver of the car, insured with the appellant herein was marked as Ex.P1. The claimant in his evidence as PW1 deposed in tune with the averments made in the claim petition and his evidence was very well corroborated by the contents of Ex.P1 (FIR No.440/2016). On the part of the appellant, the driver of the Bolero Car was examined as RW1 and a rough sketch was marked as Ex.R1. The appellant also relied on the judgment of the Criminal Court in C.C.No.5 of 2017, dated 20.10.2017, which was marked as Ex.R3, wherein the learned Judicial Magistrate had dismissed the case (FIR No.440/2016) filed against the driver of the car, as the charges framed against him were not proved by the prosecution beyond the reasonable doubts and acquitted him from the charges.

8. Though the RW1 (Murugan), driver of the car, in his evidence had stated that the accident had occurred due to the negligence on the part of the driver of the two wheeler, his evidence was disbelieved by



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the Tribunal. Further, though rough sketch was marked on the side of the appellant, the police officer, who prepared the rough sketch was not examined as witness and hence, the said rough sketch has not been taken into consideration by the Tribunal. It is settled law that an acquittal in criminal case is not binding the other proceedings and the Tribunal based on the evidence available on record, independently can fix the negligence. In the case on hand, the Tribunal based on the evidence of PW1 and the contents of the FIR, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the Bolero car, insured with the appellant herein.

9. A perusal of Ex.R1 rough sketch would indicate that the accident had occurred in a narrow road, having 20 feet width. In such circumstances, the driver of the Bolero Car, who is driving the vehicle in a narrow road should have taken extra care while driving the vehicle. Therefore, the finding rendered by the Tribunal that the accident had occurred only due to the negligence on the part of driver of the car, insured with the appellant herein is confirmed.



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10. It is seen from the medical records that the claimant suffered fracture in his right tibia, right femur and right clavicle bones. It was claimed by the claimant that he was engaged in agricultural work and milk vending. Therefore, the Medical Board, who examined the claimant had issued Ex.C1 disability certificate, assessing the disability at 45%. Taking into consideration the nature of injury and the disability certificate Ex.C1, the Tribunal came to the conclusion that the injuries suffered by the claimant interfered with his avocation and hence, adopted multiplier method. Further, the notional income of Rs.7,500/- fixed by the Tribunal is also conservative one, considering the date of accident. Hence, I do not find anything to interfere with the findings of the Tribunal with regard to the quantum of compensation for the disability suffered by the claimant. The amount of Rs.1,49,383/- fixed by the Tribunal towards medical expenses is also based on the evidence available on record. The compensation awarded under various other heads also appears to be reasonable and hence, the same warrants no interference by this court.



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11. Accordingly, this civil miscellaneous appeal is dismissed.

There shall be no order as to costs. Connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. The I Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Hosur .
2. The Section Officer,
V.R.Section, Madras High Court.



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S.SOUNTHAR, J.

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