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**(2011) 04 MAD CK 0495**

**In the Madras High Court**

**Case No :** C.M.A. No. 2782 of 2010 and M.P. No''s. 1 of 2010 and 1 of 2011

United India Insurance Company Ltd. APPELLANT

Vs

E. Kosalai Devi and R. Nathuram RESPONDENT

**Date of Decision :** 29-04-2011

**Acts Referred:**

**Citation :** (2011) 04 MAD CK 0495

**Hon'ble Judges :** C.S. Karnan, J

**Bench :** Single Bench

**Advocate :** S. Arun Kumar, for the Appellant; S. Haridoss, for R-1, for the Respondent

**Final Decision :** Dismissed

## Judgement

C.S. Karnan, J.—The above appeal has been filed by the Appellant / United India Insurance Company Ltd., against the award and decree dated 06.08.2009 made in M.C.O.P. No. 4483 of 2005 on the file of the Motor Accident Claims Tribunal v. Court of Small Causes Chennai.

2. The short facts of the case are as follows:

On 14.06.2005, at about 16.00 hours, while the Petitioner, E.Kosalai Devi was travelling as a passenger in the share auto-rickshaw bearing Registration No. TN-05-L-3975 from Manali to Manali Pudu Nagar and when the auto was near Lakshmi-Saraswathi Thirumana Mandapam, Manali, the driver of the said auto-rickshaw drove the vehicle in a rash and negligent manner, as a result of which the auto capsized. Due to the above accident, the Petitioner sustained grievous injuries. Hence, the Petitioner has claimed a compensation of Rs. 2,00,000/- from the first and second Respondents being the owner and insurer of the share auto bearing Registration No. TN-05-L-3975.

3. The 2nd Respondent, the United India Insurance Company Limited, in his counter has resisted the claim and denied the averments in the claim regarding manner of accident, age, income and occupation of the injured Petitioner, nature

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of injuries, medical treatment taken and disability sustained. It was stated that the Petitioner and Ors. suddenly stepped down from the auto and due to which the driver of the auto had applied sudden brake resulting in the accident. It was also stated that the auto bearing Registration No. TN-05-L-3975 had not been insured with the second Respondent; it was also denied that the vehicle was covered under a valid permit, F.C. It was also denied that the driver of the vehicle had a valid driving licence at the time of accident. It was stated that the claim was excessive.

4. On the averments of both parties, the tribunal had framed four issues for consideration namely;

(i)Whether the accident had happened due to the rash and negligent driving of the driver of the share auto-rickshaw bearing Regn. No. TN-05-L 3975 ?

(ii)Whether the Respondents are liable to pay compensation ?

(iii)Whether the Petitioner is entitled for compensation ?

(iv)To what relief is the Petitioner entitled to get ?

5. In the said accident, two other persons who had sustained injuries had also filed claim petitions in M.C.O.P. Nos. 4481 and 4482 of 2005. Based on the Memo filed for joint trial, all the petitions were taken together and common evidence recorded. On behalf of the Petitioner four witnesses were examined and Exs. P1 to P13 were marked. On the Respondents side No. witness, No. documents.

6. From the evidences of the injured Petitioners PW1, Mr. Srinivasan in M.C.O.P. No. 4481 of 2005, PW2, Mr. Perumal in M.C.O.P. No. 4482 of 2005 and PW3 Mrs. Kosalai Devi in M.C.O.P. No. 4483 of 2005, it is seen that on 14.06.2005, at about 16.00 hrs, while the above Petitioners were travelling as passengers in a share auto-rickshaw bearing Regn. No. TN-05-L-3975 from Manali to Manali Pudunagar and when the auto was near Lakshmi Saraswathi Thirumana Mandapam, Manali, the driver of the said auto-rickshaw drove the auto in a rash and negligent manner, as a result of which the auto capsized. Thereby the Petitioners sustained grievous injuries. To corroborate the oral evidence of PW1 to PW3, Ex.P1 attested copy of FIR, had been marked. On perusal of Ex.P1, it is seen that one E.Ellamuthu, who is the father of the Petitioner Srinivasan in M.C.O.P. No. 4481 of 2005 had lodged the complaint on the date of occurrence itself. Pursuant to the complaint, a case had been registered against the driver of the share auto-rickshaw. No. Contra evidence had been let in by the Respondents side to disprove the contentions of the Petitioner. Hence, the tribunal held that the accident had been caused by the rash and negligent driving by the driver of the 1st Respondent''s vehicle. Hence, the Respondents were held liable to compensate the Petitioner.

7. On scrutiny of discharge summary issued by Government Stanley Hospital, Chennai, marked as Ex.P5, it is seen that the Petitioner had sustained injuries due to the accident. It is shown that she had been an inpatient in this hospital

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from 14.06.2005 to 17.07.2005. She had suffered fracture of tempo parietal bone with concussion of brain left parietal tube and fracture of left super condylam and pop cast was applied for fracture. The doctor, who assessed the disability of Petitioner was examined as PW4. PW4 adduced evidence that he had examined the Petitioner and had assessed the disability sustained by the Petitioner as 65% and in support of his evidence had marked Ex.P13, the disability certificate. The Tribunal on holding that the Petitioner''s disability could be taken as 55%, awarded a compensation of Rs. 55,000/- under the head of continuing permanent disability. As No. income proof was produced, the Tribunal held that the nominal income of the Petitioner, who is a tailor, can be taken as only Rs. 3,000/- per month, and hence awarded a compensation of Rs. 12,000/- as loss of income during the four months of medical treatment and convalescent period. Further, the Tribunal awarded Rs. 2,000/- under the head of transport expenses; Rs. 2,000/- under the head of nutrition; Rs. 13,850/- under the head of medical expenses (as per Ex.P6,P7); Rs. 10,000/- under the head of pain and suffering. In total, the Tribunal awarded Rs. 94,850/- as compensation together with interest at the rate of 9.5% per annum from the date of numbering of petition till the date of payment of compensation. The Tribunal further directed the Respondents to jointly and severally deposit the award with interest within two months from the date of its order.

8. Aggrieved by the said award passed by the Tribunal, the 2nd Respondent / United India Insurance Company Ltd., has filed the present appeal to set aside the award passed by the Tribunal in M.C.O.P. No. 4483 of 2005, on the file of Motor Accidents Claims Tribunal, Vth Court of Small Causes, Chennai.

9. The learned Counsel for the Appellant has argued that the Tribunal had erred in relying on the exaggerated assessment of 65% disability to award a sum of Rs. 55,000/- towards permanent disability. It was also pointed out that the alleged injuries and disability will not affect the earning power of the Petitioner. It was pointed out that the award granted under various heads were excessive and without basis. The learned Counsel further argued that the claimant had sustained simple injuries and the doctor had assessed the disability as 65%, which is on the higher side. The claimant had undergone treatment at Government Stanley Hospital. In order to prove the same, Ex.P5, the medical discharge summary had been marked by the claimant. Therefore, the claimant is not entitled to receive compensation under the head of medical expenses, but the learned Tribunal had awarded a sum of Rs. 13,850/- without any proper medical records. The rate of interest of 9.5% per annum is also on the higher side.

10. The learned Counsel for the claimant argued that the claimant had sustained fracture injuries on her skull and left knee and lower abdomen besides multiple injuries all over the body. As such, the doctor had assessed the disability as 65%. The claimant is entitled to receive a sum of Rs. 1,30,000/- under the head of ''disability for loss of income'' as per this Hon''ble Court decision. The

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compensation granted under other heads are on the lower side.

11. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the rate of interest fixed as 9.5% is on the higher side. Hence, this Court modifies the interest at 7.5% per annum. The compensation amount is reasonable. As such, the quantum of compensation is confirmed.

12. Therefore, this Court directs the Appellant / United India Insurance Company Limited to pay the entire compensation amount as fixed by the Tribunal, with interest at the rate of 7.5% per annum from the date of filing the claim petition till date of payment of compensation within a period of six weeks from the date of receipt of this order. After such a deposit being made, it is open to the claimant to withdraw the entire compensation amount with interest at the rate of 7.5% per annum lying in the credit of M.C.O.P. No. 4483 of 2005 on the file of the Motor Accident Claims Tribunal v. Court of Small Causes Chennai after filing a Memo along with this order.

13. Resultantly, the above Civil Miscellaneous Appeal is disposed of. Consequently, the award and decree dated 06.08.2009, made in M.C.O.P. No. 4483 of 2005 on the file of the Motor Accident Claims Tribunal v. Court of Small Causes Chennai is modified. Accordingly ordered. There is No. order as to costs. Consequently, connected miscellaneous petitions are closed.

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