

**(2011) 03 MAD CK 0554**

**Madras High Court**

**Case No:** Civil Miscellaneous Appeal No. 797 of 2011 and M.P. No. 1 of 2011

National Insurance Company  
Limited

APPELLANT

Vs

Smt. M. Jothi and Thiru I. Arul  
Antony

RESPONDENT

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**Date of Decision:** March 29, 2011

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

**Bench:** Single Bench

**Advocate:** J. Chandran, for the Appellant; S. Haridoss, for R-1, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

C.S. Karnan, J.

The above appeal has been filed by the Appellant/National Insurance Company Limited against the judgment and decree made in M.C.O.P. No. 3208 of 2007, dated 31.08.2010, on the file of Motor Accident Claims Tribunal, IVth Small Causes Court, Chennai.

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

On 28.06.2007, at about 19.00 hours, while the Petitioner was riding the motorcycle bearing Registration No. TN-01-Q-6180 and proceeding on the Poonamalle High Road and when the motorcycle was near Parivakkam Junction, the lorry bearing Registration No. TN-49-M-4753, driven by its driver in a rash and negligent manner and hit the motorcycle. As a result, the Petitioner sustained grievous injuries. Hence, the Petitioner has filed a claim for compensation of Rs. 3,00,000/- against the Respondents. The first Respondent is the owner of the said lorry and the second Respondent is its insurer.

3. The second Respondent, the National Insurance Company Limited, in his counter has resisted the claim denying the averments in the claim regarding the age, income and occupation of Petitioner, place and date of accident, nature of injuries

sustained by Petitioner, period of treatment and disability sustained by him. It was also stated that the Petitioner should prove that the first Respondent's lorry had been validly insured with them at the time of accident. It was also submitted that the driver of the lorry did not have a valid driving licence at the time of accident. It was also stated that the accident was caused due to negligence of Petitioner as he failed to observe the traffic rules. It was further stated that the claim was excessive.

4. On the averments of both parties, the Tribunal had framed four issues for consideration in this case, namely;

(i) Whether the accident had happened due to the rash and negligent driving by the driver of the lorry bearing Registration NO. TN-49-M-4753?

(ii) Whether the Petitioners are entitled for the compensation?

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

(iv) To what relief are the Petitioners entitled to get?

5. In the said accident, another person, one Sudhakar, who was the pillion rider in the said motorcycle, had also sustained injuries. He had filed a claim in M.C.O.P. No. 3207 of 2007. Based on the Memo for a joint trial, both the petitions were taken together and common evidence recorded in M.C.O.P. No. 3208 of 2007 and documents were marked in the said O.P. On behalf of the Petitioners, three witnesses were examined and eleven documents were marked as Exs.P1 to P11. On the Respondents side, no witness, no documents.

6. PW1 and PW2 adduced evidence which were in consonance with the version of accident as stated in the claim. To corroborate the oral evidence of PW1 and PW2, Ex.P1, F.I.R had been marked. It is seen from the F.I.R. that one Govindaraj had lodged a complaint on the date of occurrence itself. Pursuant to the complaint, a case has been registered against the said driver of the lorry. As the driver of the first Respondent has not come forward to adduce evidence regarding the accident and as no contra evidence has been let in by the Respondents side to disprove the contentions of the Petitioner, the Tribunal based on oral and documentary evidence, held that the accident was caused due to the rash and negligent driving by the driver of the first Respondent's vehicle. Hence, the Tribunal held that both the first Respondent being the owner of the said lorry and the second Respondent, its insurer are liable to pay compensation to the Petitioner.

7. Ex.P2, the discharge summary issued by Government General Hospital, Chennai shows that he had taken treatment as inpatient from 29.06.2007 to 04.08.2007. He had sustained occipital tissue fracture, left frontal brain contusion, acute subdural hemorrhage, fracture of his right fifth and sixth ribs, decompressive craniotomy and evacuation of SDH. PW3, Dr. Thiyagarajan, who had examined the Petitioner adduced evidence that the Petitioner had sustained fracture in the skull bone situated on the back side and to the right; that he had also sustained fracture of

bone on his left forehead; that due to this, internal bleeding in the brain had taken place; to set this right, the bone at the back of his head had been removed; treatment had also been given for the swelling on his brain. Due to these injuries, the Petitioner suffers from headache, giddiness, memory loss, shivering of his hands and fits. The co-ordination between the hands and legs have also been affected; that the Petitioner has difficulty in doing any work. The doctor had stated that the disability sustained on this count was 45%. Further, it is seen that the Petitioner has sustained severe injuries on his right chest. Due to this, the fifth and sixth ribs of the chest have been fractured and even after treatment have joined in an improper manner. Due to this, the Petitioner experiences pain while he sighs; experiences breathlessness on climbing stairs. On this count, the doctor had stated, that the Petitioner had sustained 20% disability. The doctor stated that the Petitioner had sustained 65% disability, in total on both counts. As no income proof was furnished by the Petitioner, the Tribunal held that the nominal income of the Petitioner could be fixed at Rs. 4,500/- per month, considering that he had an electrical shop.

8. Based on the oral and documentary evidence, the Tribunal granted an award of Rs. 2,12,000/- as compensation to the Petitioner, together with interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation. The breakup of compensation is as follows:

Rs. 1,20,000/-  
Rs. 27,000/-  
Transport to hospital  
Rs. 10,000/-  
Rs. 10,000/-  
Nutrition  
Rs. 10,000/-  
For medical expenses  
Rs. 15,000/-  
For pain and suffering  
Rs. 20,000/-  
Loss of earning capacity

9. The Tribunal directed the first and second Respondents to deposit the award with interest within two months from the date of its order and directed the second Respondent to pay on behalf of the first Respondent.

10. Aggrieved by the said award passed by the Tribunal, the second Respondent has filed the present appeal to set-aside the award passed.

11. The learned Counsel for the Appellant has argued that the evidence of PW3 should have been disbelieved by the Tribunal in the absence of any C.T. Scan report, old X-rays proving the fracture of skull, diagnostics report, medical prescriptions and treatment records. It was stated that the award granted was excessive and unsustainable in law in the circumstances of the case. The learned Counsel for the Appellant further submitted that the doctor's assessment of the disability at 65%

was excessive. Besides, the Tribunal had awarded Rs. 20,000/- under the head of "loss of earning power", which is not pertinent in the instant case. The Tribunal's award of compensation under the heads of transport and nutrition are on the higher side.

12. The learned Counsel for the claimant argued that the claimant had sustained injuries on his skull, which is grievous in nature. Besides, he had sustained bone fracture injuries on his fifth and sixth rib bones. Due to the accident, the claimant's respiratory system has been affected. As such, he has breathing trouble and this is permanent in nature. The doctor had also properly assessed the disability. After considering all aspects, the tribunal had awarded compensation and hence this is fair and justifiable. Therefore, the appeal is not maintainable.

13. 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 Tribunal's award of a sum of Rs. 20,000/- under the head of "loss of earning power" is not pertinent. Hence, the Court sets-aside the award granted under this head. Further, the Tribunal had awarded Rs. 27,000/- under the head of loss of income during medical treatment period and this is also on the higher side. Hence, this Court reduces the award granted under this head to Rs. 18,000/-. Therefore, this Court scales down the compensation from Rs. 2,12,000/- to Rs. 1,83,000/-, as this is found to be fair and justifiable. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. This Court directs the Appellant/National Insurance Company to deposit the said compensation amount of a sum of Rs. 1,83,000/- within a period of four weeks from the date of receipt of this order, after deducting earlier payments made, if any. After such deposit being made, it is open to the claimant to withdraw the modified compensation amount as fixed by the Court lying in the credit of M.C.O.P. No. 3208 of 2007 on the file of IVth Small Causes Court, Chennai, after filing a Memo along with this order.

14. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal, IVth Small Causes Court, Chennai made in M.C.O.P. No. 3208 of 2007, dated 31.08.2010 is modified. There is no order as to costs. Consequently, connected miscellaneous petition is closed.