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C.M.A.No.4737 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 28.11.2023**

CORAM :

**THE HONOURABLE MR. JUSTICE M. DHANDAPANI**

**C.M.A.No.4737 of 2019**

**and**

**C.M.P.No.26988 of 2019**

Cholamandalam MS General  
Insurance Co.Ltd.  
Rep. by its Manager,  
2<sup>nd</sup> Floor, Dare House,  
NSC Bose Road,  
Chennai – 600 001.  
Appellant

...

Vs.

1. V.Loganathan  
2. K.Elango  
Respondents

...

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.10.2018 in MCOP No.666 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) at Krishnagiri.

For Appellant : M/s.R.Sree Vidhya

For Respondents : Mr.S.P.Yuvaraj [R1]



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No Appearance [R2]

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**JUDGMENT**

The above appeal is filed by the appellant/insurance company against the Judgment and Decree dated 24.10.2018 in MCOP No.666 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub-Judge) at Krishnagiri.

2. Though the second respondent was served, no one appeared on behalf of the second respondent. Considering the period of pendency of the appeal, the same is disposed of based on the materials available on record.

3. It is the case of the appellant that, on 27.08.2015 at about 1.00 hours due to mechanical problem, when a TNSTC bus was halted near a hotel, at that time, while the first respondent was controlling the traffic as SSI of Police on the left side of the road, at that time an eicher lorry bearing Regn.No.TN 33 AS 5020 belonging to the second respondent and insured with the appellant driven by its driver in a rash and negligent manner, hit the first respondent. Consequently, the first respondent



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sustained grievous injuries and was admitted in the hospital. Hence, the first respondent filed a claim petition seeking a sum of Rs.30,00,000/- as compensation.

4. Before the Tribunal, the appellant / insurance company examined P.W.1 and marked Exs.P.1 to Ex.P.13. On the side of the respondent/claimant, they examined two witnesses viz., R.W.1 and R.W.2 and marked Ex.R.1. After adjudication, the Tribunal awarded a sum of Rs.15,22,000/- as compensation to the first respondent/claimant. Challenging the same, the appellant/insurance company has preferred the present appeal.

5. The learned counsel appearing for the appellant submitted that, though the total medical claim is Rs.9,91,581/-, however, by way of interim bill the claimant has already claimed a sum of Rs.2,13,801/-, without considering the same, the Tribunal has awarded a sum of Rs.9,91,581/- under the head medical expenses and the same requires to be deducted. He further submits that the Tribunal has awarded a sum of Rs.1,50,000/- each under the head loss of amenities and pain and



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suffering which is highly excessive, which requires to be interfered with.

Accordingly, the impugned award deserves to be quashed and this appeal is liable to be allowed.

6. The learned counsel appearing for the first respondent / claimant submitted that, upon considering all the oral and documentary evidence, the Tribunal has rightly passed the award as per the injuries sustained by the first respondent / claimant and the same does not require interference. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant / insurance company and the learned counsel appearing on behalf of the first respondent / claimant and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. It is the grievance of the appellant / insurance company that though a sum of Rs.9,91,581/- rounded off as Rs.9,92,000/- was awarded under the head medical bills, however, by way of interim bill, the claimant has claimed a



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sum of Rs.2,13,801/-from the insurance company. Hence, the amount awarded under the head medical bills stands modified from Rs.9,92,000/- to Rs.7,78,199/- (Rs.9,92,000/- – Rs.2,13,801/- = Rs.7,78,199/-). The Tribunal awarded a sum of Rs.1,50,000/- each under the heads pain and suffering and loss of amenities and enjoyment of life is highly excessive. Hence, this Court is inclined to fix a sum of Rs.1,00,000/- each under the said heads. No amount has been awarded under the head loss of amenities, hence this Court is inclined to fix a sum of Rs.5,000/- under the said head. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-

| <i>S.No.</i> | <i>Description</i>                         | <i>Awarded by<br/>the Tribunal<br/>(Amount in<br/>Rs.)</i> | <i>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</i> |
|--------------|--------------------------------------------|------------------------------------------------------------|----------------------------------------------------------|
| 1            | Loss of earning power                      | 1,95,000/-                                                 | 1,95,000/-                                               |
| 2            | Medical expenses                           | <b>9,92,000/-</b>                                          | <b>7,78,199/-<br/>(reduced)</b>                          |
| 3            | Transport & Nutrition,<br>attender charges | 30,000/-                                                   | 30,000/-                                                 |
| 4            | Pain and Suffering                         | <b>1,50,000/-</b>                                          | <b>1,00,000/-</b>                                        |



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| <i>S.No.</i> | <i>Description</i>                      | <i>Awarded by<br/>the Tribunal<br/>(Amount in<br/>Rs.)</i> | <i>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</i> |
|--------------|-----------------------------------------|------------------------------------------------------------|----------------------------------------------------------|
|              |                                         |                                                            | <b>(reduced)</b>                                         |
| 5            | Loss of amenities and enjoyment of life | <b>1,50,000/-</b>                                          | <b>1,00,000/-<br/>(reduced)</b>                          |
| 6            | Damages to clothing and articles        | 5,000/-                                                    | 5,000/-                                                  |
| 7            | Attender charges                        | -                                                          | <b>5,000/-</b>                                           |
|              | <b>Total</b>                            | <b>15,22,000/-</b>                                         | <b>12,13,199/-</b>                                       |
|              | <b>Rounded off to</b>                   | <b>15,22,000/-</b>                                         | <b>12,14,000/-</b>                                       |

10. Accordingly, this appeal is partly allowed and the compensation amount is reduced from **Rs.15,22,000/-** to **Rs.12,14,000/-** and the appellant/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.666 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent/claimant through RTGS within a period of two weeks



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thereafter. It is open to the appellant / insurance company to withdraw the excess amount if any deposited by them. There shall be no order as to costs in the present appeal.

**28.11.2023**

Index : Yes / No  
Speaking order / Non-speaking order  
Netrual Citation Case : Yes / No  
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**To**

1. Motor Accident Claims Tribunal (Special Sub-Judge) at Krishnagiri.
2. The Section Officer, V.R.Section, High Court, Madras.



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**M.DHANDAPANI, J.**

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