



C.M.A.(MD).No.1211 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.1211 of 2022

and

C.M.P.(MD).No.12336 and 5241 of 2023

Reliance General Insurance Company Limited,
T.Nagar Branch,
Chennai
represented by its Manager.

... Appellant

-Vs-

1.M.Menaka
2.Charles
3.Ayubhkan

... Respondents

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.3 of 2016 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Kuzhithurai, dated 27.07.2022.

For Appellant	: M/s.K.R.Shivashankari
For R1	: Mr.M.R.Srinivasan
For R2	: No appearance



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J U D G M E N T

Challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal, Subordinate Judge, Kuzhithurai in M.C.O.P.No.3 of 2016, dated 27.07.2022, the present appeal has been filed by the Insurance Company.

2. Though the appeal has been filed on the ground of negligence, the main argument is with regard to the quantum of compensation. The petitioner is a fashion designer by profession. On 28.08.2014, at about 1.20 a.m., when the petitioner was on her way to Chennai from Kaliyakkavilai in a bus bearing Registration No.TN 28 AL 9010, the second respondent, the driver of the bus drove the bus in a rash and negligent manner with high speed and while overtaking the lorry, which was proceeding in the same direction, hit the lorry from the behind. As a result, a piece of wood, which was loaded in the lorry hit on the face of the petitioner and she has lost her seven teeth and four teeth were broken and there was a disfigurement on her face. Before the Tribunal, the third respondent/Insurance Company has disputed the income and the nature of the injuries.



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3. Before the Tribunal, on the side of the petitioner, P.Ws.1 to 3 were examined and Exs.P1 to P3 were marked and on the side of the respondents, no oral and documentary evidence was marked.

4. The Tribunal, after finding that the driver of the offending vehicle was negligent in driving the vehicle and considering the nature of the injuries, awarded a sum of Rs.14,42,665/- in the following manner:

Description	Amount
Compensation for injuries	Rs.5,00,000/-
Pain and sufferings	Rs.3,00,000/-
Nutrition expenses	Rs.50,000/-
Attender expenses	Rs.30,000/-
Transport charges	Rs.20,000/-
Medical bills	Rs.42,665/-
Mental agony	Rs.5,00,000/-
Total	Rs.14,42,665/-

Challenging the same, the present appeal came to be filed by the Insurance Company.



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5. The main contention of the learned counsel appearing for the appellant/Insurance Company that the driver of the lorry was also negligent in loading the wooden pieces beyond the body of the lorry. That apart, the Tribunal has awarded the compensation for pain and suffering and mental agony without any basis. Hence, the contention of the learned counsel for the appellant is that the method of compensation calculated by the Tribunal is not on the basis of any legal evidence.

6. The learned counsel appearing for the first respondent/the petitioner would submit that the loss of seven teeth and disfigurement on the face leading to serious consequences and the marriage prospects of the petitioner also delayed. Therefore, the amount awarded towards pain and suffering and mental agony is well balanced and it does not require any interference.

7. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in awarding compensation for pain and suffering and mental agony, without any evidence on that regard?



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8. As far as the negligent aspect is concerned, it is clearly established on record that the lorry was proceeding in front of the bus. In fact, the bus hit the lorry behind the back. The very fact that the bus hit the lorry from the behind without maintaining a reasonable distance itself clearly indicate that the driver of the bus drove the vehicle in such a manner restlessly. Therefore, the contention of the Insurance Company before this Court is that the wooden pieces protruding outside the body of the lorry and hence, there was a negligence on the part of the driver of the lorry cannot be countenanced. As far as the injury is concerned, it is not disputed that the petitioner has lost her seven teeth fully and four teeth were broken. In this regard, the Medical Officer / P.W.3, who treated the injured, has also spoken that. His evidence very clearly that the permanent disability and she has suffered disfigurement. Though the percentage of disability not specifically spoken, considering the nature of the disability and the injuries sustained on the teeth of the petitioner, the Tribunal has awarded a sum of Rs.5,00,000/- towards permanent disability.

9. This Court is of the view that considering the nature of the injury and



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disfigurement caused on the face of the petitioner, the amount awarded by the Tribunal towards compensation for injuries is very reasonable and it does not require any interference. Though the Tribunal has awarded a sum of Rs.3,00,000/- for pain and suffering, the Tribunal has not taken into consideration the future loss of income. The evidence on record clearly indicate that for one year the petitioner was not in a position to do any work and she was a fashion designer and working in Chennai.

10. In such a view of the matter, the Tribunal at least ought to have awarded a sum of Rs.2,40,000/- towards loss of income. That apart, the Tribunal also failed to award any amount towards future medical expenses. Hence, this Court awarded a sum of Rs.2,40,000/- towards loss of income. Further, this Court awarded a sum of Rs.1,00,000/- towards future medical bills and awarded a sum of Rs.1,00,000/- towards mental agony. Accordingly, the amount awarded by the Tribunal is modified as follows:

Description	Amount
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Compensation for injuries	Rs.5,00,000/-
Pain and sufferings	Rs.3,00,000/-
Nutrition expenses	Rs.50,000/-
Attender expenses	Rs.30,000/-
Transport charges	Rs.20,000/-
Medical bills	Rs.42,665/-
Mental agony	Rs.1,00,000/-
Loss of income	Rs.2,40,000/-
Future medical expenses	Rs.1,00,000/-
Total	Rs.13,82,665/-

11. Considering the fact that the petitioner is aged about 28 years and bachelor at the relevant point of time and there was a total disfigurement and it causes serious ailment and also considering the nature of surgery, this Court added a sum of Rs.2,50,000/-. Hence, the award amount comes to Rs.16,32,665/-.

12. In the result, the Civil Miscellaneous Appeal is dismissed and the appellant/Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5%, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the same. No costs. Consequently, the connected Miscellaneous Petitions are



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closed.

26.06.2023

akv

To

- 1.The Motor Accident Claims Tribunal,
Subordinate Judge,
Kuzhithurai,
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR,J.

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