



C.M.A.Nos.1780 of 2023 & 2224 of 2022 and C.M.P. Nos.17465 of 2023 and 17226 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.Nos.1780 of 2023 & 2224 of 2022
and C.M.P. Nos.17465 of 2023 and 17226 of 2022

C.M.A. No.1780 of 2023

S. Aswath

... Appellant

VS.

1. M. Mahendran

2. The National Insurance Company Limited,
No.66, Greaves Road,
Chennai 600 006.

...Respondents

C.M.A. No.2224 of 2022

The National Insurance Company Limited,
No.66, Greaves Road,
Chennai 600 006.

... Appellant

VS.

1. M. Mahendran

2. S. Aswath

...Respondents



C.M.A.Nos.1780 of 2023 & 2224 of 2022 and C.M.P. Nos.17465 of 2023 and 17226 of 2022

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.03.2022 in M.C.O.P.135/2021 on the file of the Special Sub-court, Motor Accident Claims Tribunal II, Tiruvallur.

Appearance In C.M.A. No.1780 of 2023

For Appellant : Ms. B. Leena
For R1 : Mr. K.G.Senthilkumar
For R2 : Mr. J. Michael Visuvasam

Appearance In C.M.A. No.2224 of 2022

For Appellant : Mr. J. Michael Visuvasam
For R1 : Mr. K.G.Senthilkumar
For R2 : Ms. B. Leena

COMMON JUDGMENT

The appellant in C.M.A.1780 of 2023 is the first respondent (owner of the vehicle) in M.C.O.P.135/2021 on the file of the the Special Sub-court, Motor Accident Claims Tribunal II, Tiruvallur, while the appellant, the National Insurance Company Limited, in C.M.A.2224 of 2022 is the second respondent in the said petition.



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2. The first respondent/claimant in both the appeals filed the abovesaid claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.30,00,000/- for the injuries sustained by him in a road accident that occurred on 26.10.2019.

3. The case of the claimant is that on 26.10.2019 at about 5.30 p.m., he was riding his motorcycle bearing Registration number TN-20-AH-9456 on Minjur-Vadalur Service Road and when he was nearing Vellanoor Bharathi Nagar Bus Stop, a speeding car bearing Registration number TN-19-AL-6921 hit his two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to a hospital.

3.1. According to the claimant the rash and negligent driving of the driver of the car bearing Registration number TN-19-AL-6921, was the cause of the accident and that since the said vehicle was insured with the National Insurance Company Limited, both of them are jointly and severally liable to pay compensation to him.



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4. In the Tribunal, though the appellant in C.M.A. No.1780 of 2023, the owner of the car, filed his counter, did not participate in the trial proceedings and the Insurance Company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5.The Tribunal, after analysing the evidence on record fastened negligence on the part of the driver of the car bearing Registration number TN-19-AL-6921. Since the driver of the car did not possess a valid driving license on the date of accident, the Tribunal directed the National Insurance Company Limited to pay compensation of Rs.8,67,880/- to the claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, in the first instance and then recover the same from the owner of the car bearing Registration number TN-19-AL-6921, under the same cause of action (pay and recover), vide its orders dated 31.03.2022.

6. Aggrieved over the orders passed by the Tribunal, the owner of the car and the Insurance Company have filed the present appeals.



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7. Heard Ms.B.Leena, learned counsel for the appellant,

Mr.K.G. Senthil Kumar, learned counsel for the first respondent and Mr.J.Michael Visuvasam, learned counsel for the second respondent Insurance Company, in C.M.A. No.1780 of 2023.

8. In the appeal in C.M.A. No.1780 of 2023, the owner of the car filed a petition in C.M.P. No.3703 of 2024 to receive additional evidence. According to the owner of the car, he was holding a learner's driving license and his father who was holding a valid driving license was seated next to him in the car. Therefore, there was no violation of policy condition and the order of 'pay and recover' passed by the Tribunal is wrong.

8.1. Since the owner of the car did not adduce sufficient evidence to substantiate his contention, this court vide its orders dated 29.04.2024, directed the Tribunal to record evidence in this regard and send the same to this Court. Accordingly, the Tribunal recorded the evidence of the first respondent, the owner of the Car. It is seen from the evidence that the father of the owner of the car, who was having a valid driving license, was seated next to the driver, his son, and therefore, the order of 'Pay and recover' passed by the Tribunal is set aside.



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9. Mr. J. Michale Visuvasam, learned counsel appearing for the

Insurance Company contended that the Tribunal while computing compensation under the head 'disability' granted Rs.5,000/- per percentage of disability and awarded compensation of Rs.2,25,000/- towards partial permanent disability (45x5000) and also awarded another sum of Rs.3,22,560/- under the same head by adopting multiplier method. The Tribunal also adopted multiplier method and awarded a further sum of Rs.3,22,560/-, which according to the counsel for the Insurance company, is erroneous. He therefore, prayed for scaling down the award amount.

10. Per contra, Mr.K.G.Senthil Kumar, learned counsel for the claimant contended that the claimant was a welder by profession and on account of the accident he sustained 45% permanent disability and therefore, multiplier method was adopted by the Tribunal.

11. A perusal of the discharge summary (Ex.P2) issued by Muthu Hospital Enterprises Private Limited, Pulianthope, Chennai, shows that the claimant had sustained 'comminuted supracondylar fracture right



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knee'. The Medical Board attached to the Government Medical College Hospital, Tiruvallur, assessed the disability of the claimant as 45%. When there is no functional disability, the Tribunal had wrongly adopted multiplier method. Considering the age of the claimant and the year of accident, a sum of Rs.7,000/- per percentage of disability is awarded. Hence, a sum of Rs.3,15,000/- is awarded towards partial permanent disability.

11.1. According to the claimant he was working as a welder earning a sum of Rs.20,000/- per month. Since no satisfactory evidence was adduced by him to substantiate the income, the Tribunal fixed the notional monthly income of the claimant as Rs.12,000/-. The accident took place in the year 2019 and in the circumstances, fixing the notional monthly income as Rs.16,000/- would meet the ends of justice. On account of the accident, the claimant would have been out of action atleast for three months and therefore, a sum of Rs.48,000/- (16,000x3) is awarded towards loss of income.



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11.2. The following tabular column would show the amount awarded by the Tribunal and the modified amount awarded by this Court under various heads.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Partial permanent disability	2,25,000/- (45x5000)	3,15,000/- (45x7000)
2.	Loss of earning capacity	3,22,560/-	-
3.	Medical expenses	1,41,317/-	1,41,317/-
4.	Transportation charges	10,000/-	10,000/-
5.	Extra nourishment	12,000/-	15,000/-
6.	Damages to clothes	1,000/-	1,000/-
7.	Pain and sufferings	50,000/-	50,000/-
8.	Attender Charges	6,000/-	10,000/-
9.	Loss of amenities	1,00,000/-	25,000/-
10.	Loss of Income	-	48,000/- (3x16,000)
	Total	8,67,877/- rounded off to 8,67,880/-	6,15,317/-

11.3. Thus, the compensation awarded by the Tribunal is scaled down to Rs.6,15,317/- that would carry interest at the rate of 7.5% per annum.



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12. In the result,

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i. The appeals in C.M.A. No.1780 of 2023 and C.M.A. No.2224 of 2022 are partly allowed. No costs. Consequently connected miscellaneous petitions are closed.

ii. The order of the Tribunal directing the Insurance Company to pay the Award amount to the claimant in the first instance and then recover the same from the owner of the car is set aside.

iii. The compensation awarded by the Tribunal is scaled down to Rs.6,15,317/-.

iv. The appellant in C.M.A. No.2224 of 2022, the National Insurance Company Limited, Chennai, is directed to deposit the compensation amount of Rs.6,15,317/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, to the credit of M.C.O.P.135/2021 on the file of the Special



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Sub-court, Motor Accident Claims Tribunal II, Tiruvallur. The Insurance Company is at liberty to withdraw the excess amount, deposited by them, over and above the compensation awarded by this court.

- v. On such deposit being made, the claimant is at liberty to withdraw the same after filing a proper petition for withdrawal.

26.09.2024

Index : Yes/No
Speaking/Non-speaking order
bga

To

1. Special Sub-court, Motor Accident Claims Tribunal II, Tiruvallur.
2. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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