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C.M.A.No.265 of 2023
and C.M.P.No.2012 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.265 of 2023
and
C.M.P.No.2012 of 2023

Cholamandalam MS General Insurance Company Limited,
Represented by its Branch Manager,
Dare House, 2nd Floor,
No.2, NSC Bose Road,
Chennai - 600 001.

...Appellant

.Vs.

1.Arunranjith

2.V.Latha

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 01.04.2022 in M.C.O.P.1564 of 2014 on the file of the Motor Accident Claims Tribunal, Tiruppur.

For Appellant : Ms.C.Harini

For Respondents : No appearance



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JUDGMENT

The appellant, the Cholamandalam MS General Insurance Company Limited, is the second respondent in M.C.O.P.1564 of 2014 on the file of the Motor Accident Claims Tribunal, Tiruppur. The first respondent filed the claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.32,00,000/- for the injuries sustained by him in a road accident that took place on 25.09.2014.

2. The brief case of the claimant is as follows :

On 25.09.2014, the claimant was riding his two wheeler bearing Registration Number TN-69-Q-8892 on Sevoor – Avinashi road. When he was nearing Muthammal Nagar, a speeding Eicher van bearing Registration Number TN-36-T-1599 hit his two wheeler, as a result of which, the claimant fell down and sustained injuries. He was immediately rushed to hospital.



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3. According to the claimant, the rash and negligent driving of the driver of the Eicher van bearing Registration Number TN-36-T-1599 was the cause of the accident and that since the said vehicle was insured with the present appellant, the Cholamandalam MS General Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the Eicher van remained absent and was set *ex parte*. The appellant, the Cholamandalam MS General Insurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal, vide its orders dated 01.04.2022, fastened negligence on the part of the driver of the Eicher van bearing Registration Number TN-36-T-1599 and directed the appellant Insurance Company to pay compensation of Rs.11,10,922/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realization in the first instance and then recover the same from the owner of the vehicle on the same cause of action. (Pay and Recover)



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6. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal is filed.

7. Heard Ms.C.Harini, learned counsel appearing for the appellant.

8. Ms.C.Harini, learned counsel appearing for the appellant contended that though there is no functional disability the Tribunal had adopted multiplier method and awarded exorbitant amount of Rs.7,77,600/- towards loss of earning capacity. She therefore, prayed for scaling down the award passed by the Tribunal.

9. Though notice was served on the respondents and their names were also printed in the cause list, there is no representation on their behalf.



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10. A perusal of the records shows that the claimant had sustained the following injuries :

Diagnosis :

"Head injury with left orbital fracture, left lateral malleolus fracture, left clavicle fracture mid 1/3 communitied, left shaft of femur fracture."

The Medical Board attached to Kovai Medical Centre and Hospital, Coimbatore, assessed the partial permanent disability of the claimant as 68%. Since there is no functional disability, the Tribunal was wrong in adopting multiplier method. The claimant was aged 19 years on the date of accident and the accident took place in the year 2014. Considering the same, a sum of Rs.5,000/- per percentage of disability is awarded. Therefore, a sum of Rs.3,40,000/- (68 x 5000) is awarded towards partial permanent disability.

10.1. According to the claimant, he was a helper in a bank earning a sum of Rs.8,000/- per month. On account of the accident, the appellant would not have been in a position to attend to his regular work atleast for three months. Thus, a sum of Rs.24,000/- (8,000 x 3= 24,000) is



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awarded towards loss of income. The following tabular column would show the amount awarded by the Tribunal and the amount awarded by this Court:

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Partial permanent disability	7,77,600/-	3,40,000/- (68 x 5000)
2.	Medical bills	2,73,322/-	2,73,322/-
3.	Pain and sufferings	15,000/-	15,000/-
4.	Extra nourishment	15,000/-	15,000/-
5.	Transportation charges	15,000/-	10,000/-
6.	Attendant charges	15,000/-	10,000/-
7.	Loss of income	-----	24,000/- (8,000 x 3)
TOTAL		Rs.11,10,922/-	Rs.6,87,322/-

11. Thus, the compensation awarded by the Tribunal is hereby scaled down to Rs.6,87,322/- that would carry interest at the rate of 7.5% per annum.



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12. In the result,

- i. The Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. The compensation awarded by the Tribunal is hereby scaled down to Rs.6,87,322/-.
- iii. The appellant, the Cholamandalam MS General Insurance Company Limited is directed to deposit the modified award amount i.e. Rs.6,87,322/- (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 to the credit of M.C.O.P.1564 of 2014 on the file of the Motor Accident Claims Tribunal, Principal Court, Tiruppur, within a period of four weeks from the date of receipt of a copy of this order / uploading of this order, in the first instance and then recover the same from the owner of the vehicle on the same cause of action. (Pay and Recover)



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iv. On such deposit being made, the claimant / first respondent is permitted to withdraw the same with accrued interest and costs, after following due process of law.

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

To

1.The Motor Accident Claims Tribunal,
Principal Court, Tiruppur.

2.The Section Officer, VR Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

mtl

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