



C.M.A.No.3185 of 2024

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M.DHANDAPANI, J.

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Today, this matter is listed under the caption “For Being Mentioned” at the instance of the Registry.

2. It is brought to the notice of this Court that though the above appeal is a claimant appeal, however, it has been stated that the appellant is not entitled for any interest for the default period in the last but one line of paragraph No.13. Hence, the said clause is not required in the above appeal

3. In view of the above, Paragraph No. 13 of the judgment dated 09.12.2024 is recalled and shall stand replaced with the following paragraph:

“13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.2336 of 2017 is modified by deducting the compensation amount from **Rs.6,64,800/-** to **Rs.3,00,000/-**. The Appellant Insurance is directed to deposit the said amount to the credit of MCOP.No. 2336 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 four (4) weeks 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 thereafter. No costs. Consequently, connected miscellaneous petition is closed.”



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4. All the other observations made in the earlier order dated 09.12.2024 shall remain intact.

5. Registry is directed to carry out the necessary correction as aforesaid in the order dated 09.12.2024 and issue fresh copy of the order to the learned counsel for the parties.

30.04.2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3185 of 2024

and

C.M.P.No.26532 of 2024

The Divisional Manager,
National Insurance Company Ltd.,
No.110, J.N.Street,
Puducherry – 605 001.

... Appellant

Vs.

1. A.Ezhilarasan

2. M.Kalpana

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment passed in MACTOP.No.2336 of 2017 dated 10.03.2022 on the file of the Motor Accident Claims Tribunal, 1st Additional Sub Judge, Cuddalore.

For Appellant : M/s.N.B.Surekha

For Respondents : Mrs.Ramya.V.Rao for R1



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JUDGMENT

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The above appeal is filed by the appellant / insurance company challenging the compensation awarded by the Motor Accident Claims Tribunal, 1st Additional Sub Judge, Cuddalore in the Judgment and decree dated 10.03.2022 in MACTOP.No.2336 of 2017.

2. In view of the judgment being passed, notice to the second respondent is dispensed with.

3. It is the case of the first respondent / claimant that, on 05.04.2017 at about 14.15 hours, when the claimant was riding a two wheeler bearing Regn.No.TN PY 01 AV 0370, after giving proper indicating signals, when the he turned his vehicle to the west side of the road, at that time, a car bearing Regn.No.TN 31 AU 1186 driven by its driver belonging to the second respondent insured with the appellant / insurance company, without sounding any horn, had dashed the claimant, due to which, the claimant sustained grievous injuries all over his body. Claiming compensation in a sum of Rs.20,00,000/-, the claim petition has been filed by the claimant.

4. Before the Tribunal, the first respondent / claimant had examined



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P.W.1 and marked Exs.P.1 to Ex.P.8. On the side of the appellant / insurance company, they have neither examined any witnesses nor marked any documents and Court document was marked as Ex.C1. After adjudication, the Tribunal awarded a sum of Rs.6,64,800/- as compensation to the claimant to be payable by the appellant / insurance company. Challenging the same, the appellant / insurance company has preferred the present appeal.

5. The learned counsel appearing for the appellant / insurance company submitted that admittedly, the claimant who is the driver of the two wheeler was not in possession of valid driving licence. Though the Tribunal has rightly fixed 20% contributory negligence on the part of the driver of the two wheeler / claimant, for not possessing a valid driving licence, however, there is no functional disability. In the absence of any permanent disability, the Tribunal has adopted multiplier method which is wholly unsustainable. The other heads awarded by the Tribunal are also highly excessive and the same requires interference of this Court.

6. The learned counsel appearing for the first respondent / claimant submits that by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any interference.



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Accordingly, he prays for dismissal of the appeal.

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7. The factum and manner of the accident is not disputed by the parties. It is discernible from Ex.C1, disability certificate issued by the Medical Board that the independent Doctor assessed the disability of the claimant/ first respondent at 30%. On a perusal of the injuries sustained by the claimant, reveals that there is no functional disability and the same would not hamper the claimant from doing his day to day work. However, contrary to the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in **2011 (1) SCC 343**, the Tribunal has fixed 30% under the head “Partial permanent disability” by adopting multiplier method which is *per se* unsustainable.

8. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the claimant, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore, this Court is inclined to adopt percentage method to arrive at the compensation to be given to the claimant.



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9. However, considering the age and nature of injury sustained by the claimant and the extent of the disability would not really hamper the claimant from discharging his day to day duties, this Court fixes Rs.7,000/- per percentage of disability. Therefore, the compensation awarded under the head “Partial permanent disability” is modified to Rs.2,10,000/- ($30\% * 7000 = 2,10,000/-$).

10. In respect of the negligence on the part of the claimant is concerned, the Tribunal has rightly appreciated the fact that the claimant was a minor at the time of accident and had fixed 20% contributory negligence on the part of the claimant for not possessing a valid driving licence, which does not require any interference of this Court.

11. A sum of Rs.10,000/-, Rs.5,000/-, Rs.30,000/- and Rs.27,000/- have been awarded under the heads “Extra nourishment”, “attender charges”, “Pain and sufferings” and “For temporary loss of income” which are on the lower side and the same are enhanced to a sum of Rs.30,000/-, Rs.20,000/-, Rs.75,000/- and Rs.30,000/- respectively. This Court feels that the compensation awarded under the head “loss of amenities” is not sustainable. Hence the same is dis-



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allowed. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

12. 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 the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Partial permanent disability	7,29,000/-	2,10,000/-
2	Transportation to Hospital	10,000/-	10,000/-
3	Extra Nourishment	10,000/-	30,000/-
4	Attender charges	5,000/-	20,000/-
5	Pain and sufferings, mental agony	30,000/-	75,000/-
6	Loss of amenities	20,000/-	-
7	Temporary loss of Income	27,000/-	30,000/-
	Total	8,31,000	3,75,000/-
	Less 20% contributory negligence	6,64,800/-	3,00,000/-

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.2336 of 2017 is modified by deducting the compensation amount from **Rs.6,64,800/-** to **Rs.3,00,000/-**. The Appellant Insurance is directed to deposit the said amount to the credit of MCOP.No. 2336 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



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awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks 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 thereafter. It is underscored that the appellant is not entitled to any interest for the default period, if any. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2024

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

- 1.Motor Accident Claims Tribunal, 1st Additional Sub Judge, Cuddalore.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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