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C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2205 of 2024
and
C.M.P.No.17091 of 2024

The Branch Manager,
M/s.Liberty General Insurance Limited,
No.88, G.N.Chetty Road, Level-4,
Unit No.E-4 & F-4,
T.Nagar, Chennai.

...Appellant

.Vs.

1.Sambath

2.Kalaiselvan

...Respondents

(Cause title accepted vide court order dated 24.07.2024 made in C.M.P.No.13409 of 2024 in C.M.A.Sr.No.31342 of 2024)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 26.09.2023 in M.C.O.P.No.592 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Villupuram.

For Appellant : Ms.C.Harini
for M/s.M.B.Gopalan Associates

For R1 : Mr.N.Vijayakumar



WEB COPY



C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

JUDGMENT

The appellant, the Liberty General Insurance Limited is the second respondent in M.C.O.P.No.592 of 2019 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Court No.II, Villupuram. The first respondent filed the above said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that took place on 03.07.2018.

2. The case of the claimant is that on 03.07.2018, he was riding his two wheeler TVS XL Super Motorcycle bearing Registration No. TN-11-Q-0204 with his wife as pillion rider on Pondicherry - Villupuram road. At about 5.30 pm, when he was nearing Nallarasnpettai Village, a speeding Mahindra Auto bearing Registration No.TN-32-AM-6224 belonging to the second respondent hit his two wheeler, as a result of which, the claimant fell down and sustained injuries all over his body.



C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

3. According to the claimant, the rash and negligent driving of the driver of the Auto bearing Registration No.TN-32-AM-6224 belonging to the second respondent in the instant appeal was the cause of the accident and that since the said Auto was insured with the present appellant, the Liberty General Insurance Limited both of them are jointly and severally liable to pay a sum of Rs.15,00,000/- as compensation.

4. In the Tribunal, the owner of the Auto remained absent and was set *ex parte*. The appellant, the Liberty General Insurance Limited contested 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, awarded a compensation of Rs.4,43,550/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the claimant. The Tribunal also directed the appellant, the Liberty General Insurance Company Limited to pay the said award amount and then recover the same from the owner of the vehicle since it was proved that the driver of the Auto did not have a valid driving license on the date of the accident. Questioning



C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

the quantum of compensation, the appellant, the Liberty General Insurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Ms.C.Harini, learned counsel for the appellant and Mr.Vijayakumar, learned counsel for the first respondent.

7. Ms.C.Harini, learned counsel appearing for the appellant would contend that the Tribunal had awarded an exorbitant amount of Rs.1,00,000/- for pain and sufferings and loss of amenities and therefore, the same should be scaled down.

8. *Per contra*, Mr.Vijayakumar, learned counsel appearing for the first respondent contended that the Tribunal had taken up only a sum of Rs.5,000/- per percentage of disability for the accident which happened in the year 2018 and this Court in various decisions had fixed a sum of Rs.7,000/- per percentage of disability.



C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

9. In the claim petition, it is contended that the claimant is an agriculturist, earning a sum of Rs.40,000/- per month. In the absence of income proof, the Tribunal fixed the notional income of the claimant as Rs.9,000/- per month. It is pertinent to point out that the accident took place in the year 2018 and in the facts and circumstances, this Court is of the opinion that fixing a sum of Rs.7,000/- per percentage of disability would meet the ends of justice and thus a sum of Rs.2,10,000/- is awarded to the claimant for partial permanent disability. The claimant had sustained a fracture on his left forehead and on his neck. But the Tribunal had awarded a sum of Rs.1,00,000/- towards pain and sufferings. In the opinion of this Court, this amount is on the higher side and therefore, it is scaled down to Rs.50,000/-.

10. The award passed by the Tribunal under various heads is modified as stated below:

<i>S. No.</i>	<i>Head</i>	<i>Amount granted</i>
1.	Partial permanent disability	Rs.2,10,000/-
2.	Pain and sufferings	Rs.50,000/-
3.	Loss of amenities	Rs.50,000/-
4.	Extra nourishment	Rs.20,000/-



C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

WEB COPY

<i>S. No.</i>	<i>Head</i>	<i>Amount granted</i>
5.	Damage to clothes	Rs.1,000/-
6.	Medical bills	Rs.16,547/-
7.	Transportation charges	Rs.15,000/-
8.	Attendant charges	Rs.10,000/-
9.	Loss of income (Rs.9,000/- x 4)	Rs.36,000/-
Total		Rs.4,08,547/-

11. Thus, the compensation awarded by the Tribunal is hereby scaled down to Rs.4,08,547/- from Rs. 4,43,550/- and the said amount would carry interest at the rate of 7.5% per annum from the date of petition.

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.4,08,547/-.
- iii. The appellant, the Liberty General Insurance Limited is directed to deposit the modified award amount i.e. Rs.4,08,547/- (less the amount already deposited) together with interest at the rate of 7.5%



C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

WEB COPY

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 to the credit of M.C.O.P.No.592 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court No.II, Villupuram and recover the same from the second respondent on the same cause of action.

- 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.

09.08.2024

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

To

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

R. HEMALATHA, J.



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C.M.A.No.2205 of 2024
and C.M.P.No.17091 of 2024

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CMA.No.2205 of 2024
and C.M.P.No.17091 of 2024

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