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C.M.A.No.3503 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3503 of 2021

And

C.M.P.No.20235 of 2021

The Branch Manager
Cholamandalam MS General
Insurance Company Limited
No.9, 1st Floor, Rajaji Road,
State Bank of Travancore Upstairs
Peramanur
Salem – 636 007.

... Appellant

Vs.

1.Sakthivel
2.M.Murali

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2020 in M.C.O.P.No.475 of 2018, on the file of the Motor Accidents Claims Tribunal (Additional District Judge) at Hosur.

For Appellant : M/s.R.Sree Vidhya
For Respondents : Mr.P.A.Sudesh Kumar for R1
R2 – No Appearance



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J U D G M E N T

The second respondent before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 24.03.2020 passed by the Motor Accidents Claims Tribunal (Additional District Judge) at Hosur, in M.C.O.P.No.475 of 2018.

2.The learned counsel appearing for the appellant submitted that the first respondent claimant filed claim petition before the Motor Accidents Claims Tribunal, claiming compensation of Rs.20 Lakhs alleging that on 14.04.2018 at about 9.40 a.m., when the first respondent was riding the motorcycle, bearing Registration No.TN-29-AP-6103 at Krishnagiri – Hosur NH44 Road, near Gopasandram U Turn, the driver of the Mahindra Bolero Pick-up Light Goods Vehicle bearing Registration No.TN-30-BW-1212, owned by the second respondent and insured with the appellant, which came in the opposite direction, drove the vehicle in a rash and negligent manner and dashed against the motorcycle, due to which, the first respondent sustained injuries. After adjudication, the Tribunal awarded a sum of Rs.14,25,920/- as compensation to the claimant along with interest at



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7.5% p.a. from the date of petition till the date of realisation with proportionate costs and directed the appellant to deposit the amount.

3.The learned counsel appearing for the appellant further submitted that at the time of accident, the first respondent did not possess valid driving licence, which is evident from Ex.R.1 – AIR copy (TN29-AP-6103), however, the Tribunal fixed only 10% negligence on the first respondent which is not sustainable one. The learned counsel further submitted that without any functional disability, the Tribunal awarded compensation by adopting multiplier method, contrary to the decision of the Hon'ble Apex Court reported in *(2011) 1 SCC 343 [Raj Kumar Vs. Ajay Kumar and Ors.]*, which is not sustainable one.

4.Per contra, the learned counsel appearing for the first respondent/ claimant submitted that the first respondent claimant sustained several injuries, however, the Medical Board, Krishnagiri, assessed the disability of the first respondent as 50% disability and the first respondent was not able to appear before any other Medical Board and further submitted that after the accident, the first respondent is not able to continue his avocation as before and the same was established before the Tribunal by producing medical



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certificate issued by the Krishnagiri Medical Board and the Tribunal after considering all the factual aspects, awarded compensation which is just and reasonable and the same warrants no interference.

5.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the first respondent and perused the materials available on record.

6.Admittedly, the first respondent/ claimant did not possess valid driving licence at the time of accident and the same is evident from Ex.R.1. The first respondent did not produce valid driving licence even before this Court. Further the insurance policy of the motorcycle was also not marked before the Tribunal. Hence, the 10% negligence fixed on the first respondent/ claimant by the Tribunal warrants no interference.

7.In sofar as the quantum of compensation is concerned, the tribunal after elaborately discussing the factual aspects awarded a sum of Rs.11,88,000/- for 50% earning capacity, Rs.10,000/- for transportation charges, Rs.10,000/- for nutrition charges, Rs.50,000/- for pain and sufferings, Rs.10,000/- for discomfort, frustration and loss



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of social enjoyment, Rs.20,000/- for future medical expenses, Rs.1,27,920/- for medical bills and arrived at a total compensation of Rs.14,25,920/- and directed that the first respondent is entitled to a sum of Rs.12,83,328/- with interest at the rate of 7.5%p.a. from the date of petition till the date of realisation.

8.Since the learned counsel appearing for the first respondent submitted that the first respondent claimant sustained several injuries, however, the Medical Board, Krishnagiri, assessed the disability of the first respondent as 50% disability and the first respondent was not able to appear before any other Medical Board and inorder to ascertain the disability suffered by the first respondent as to whether it is a functional disability, this Court put forth a question to the learned counsel appearing on behalf of the first respondent as to whether the first respondent is ready to appear before some other Medical Board for which, the learned counsel submitted that the first respondent is not inclined to appear before the Medical Board at this distant point of time. In the opinion of this Court, the first respondent has not established that he suffered functional disability before the Tribunal, however, the Tribunal awarded compensation by adopting multiplier method, contrary to the decision of the Hon'ble Apex Court reported in



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(2011) 1 SCC 343 [*Raj Kumar Vs. Ajay Kumar and Ors.*], which is not sustainable one.

9.The Medical Board assessed the disability of the injured claimant as 50% disability. At the relevant point of time Rs.8,000/- per percentage of disability was awarded. Hence, the amount awarded for 50% earning capacity works out to Rs.4,00,000/- [50% X Rs.8,000/- = Rs.4,00,000/-].

10.The amount awarded under the heads transportation charges, nutrition charges, pain and sufferings, future medical expenses, in the opinion of this Court are low and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded for transportation charges is enhanced to Rs.20,000/- from Rs.10,000/-, the amount awarded for nutrition charges is enhanced to Rs.30,000/- from Rs.10,000/-, the amount awarded for pain and sufferings is enhanced to Rs.75,000/- from Rs.50,000/-, the amount awarded for future medical expenses is enhanced to Rs.30,000/- from Rs.20,000/-. The amount awarded under the head discomfort, frustration and loss of social enjoyment, in the opinion of this Court is not necessary and the same is deleted. The amount awarded under



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the other head medical bills, in the opinion of this Court is just and reasonable and the same is confirmed.

11. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	50% partial disability	Rs.11,88,000/-	Rs.4,00,000/-
2.	Transport charges	Rs. 10,000/-	Rs. 20,000/-
3.	Nutrition charges	Rs. 10,000/-	Rs. 30,000/-
4.	Discomfort, frustration and loss of social enjoyment	Rs. 10,000/-	---
5.	Pain and sufferings	Rs. 50,000/-	Rs. 75,000/-
6.	Medical bills	Rs. 1,27,920/-	Rs.1,27,920 /-
7.	Future Medical expenses	Rs. 20,000/-	Rs. 30,000/-
	Total	Rs.14,25,920/-	Rs.6,82,920/-

12. The first respondent claimant is entitled to 90% of the total compensation i.e., Rs.6,14,628/- [Rs.6,82,920/- - Rs.68,292 = Rs.6,14,628/-] along with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation.

13. The civil miscellaneous appeal is partly allowed. The judgment and decree dated 24.03.2020 passed by the Motor Accidents Claims Tribunal (Additional District Judge) at Hosur, in M.C.O.P.No.475



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of 2018, is modified to the above extent.

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14.The appellant Insurance Corporation is directed to deposit the modified award amount before the Tribunal less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant is permitted to withdraw the excess amount, if any, already deposited by them.

15.On such deposit, the first respondent/ claimant is permitted to withdraw the modified award amount with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal.

16.The civil miscellaneous appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No



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To

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1. The Motor Accidents Claims Tribunal,
(Additional District Judge) at Hosur.

M.DHANDAPANI,J.
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