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C.M.A. No.228 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.228 of 2021

and

C.M.P. No.1502 of 2021

M/S. The CHOLAMANDALAM MS General
Insurance Company Limited,
'Dare House',
N.S.C. Bose Road,
Chennai – 600 001.

.... Appellant

vs.

1. Arumugham,
2. K. Krishnan.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Decree and Judgement dated 21st January, 2020, passed in M.C.O.P. No. 1247 of 2014, by the Motor Accidents Claims Tribunal (Special Subordinate Court), at Dharmapuri

For Appellant : Mr. Michael Visuvasam

For Respondents : Mr. V. Kumaravelan for R1
No appearance for R2

**JUDGMENT**

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This appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal under the impugned award.

2. Heard Mr.J. Michael Visuvasam, learned counsel for the appellant / Insurance Company and Mr.V. Kumaravelan, learned counsel for the 1st respondent.

3. The Tribunal under the impugned award has directed the appellant / Insurance Company to pay the 1st respondent / claimant a compensation of Rs.7,84,822/- for the injuries sustained by the 1st respondent / claimant as a result of an accident caused by a vehicle owned by the 2nd respondent and insured with the appellant. The details of the compensation awarded by the Tribunal to the claimant are as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Compensation for Rs.5,000 x 12 = Rs.60,000 x 17 = Rs.10,20,000 47% of Rs.10,20,000/-	4,79,400
Loss of earning for 5 months (Rs.5,000 x 5)	25,000



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Pain and suffering	40,000
Extra nourishment expenses	35,000
Attender charges	20,000
Medical expenses	1,74,422
Transport bills	10,000
Loss on clothing	1,000
Total	7,84,822/-

4. According to the appellant / Insurance Company, despite the fact that the claim was filed by the 1st respondent / claimant under Section 163-A of the Motor Vehicles Act, the Tribunal has fixed the notional monthly income of the 1st respondent / claimant at Rs.5,000/-, which is not legally permissible. As per Section 163-A Schedule, the annual income of the injured accident victim can be fixed only at a maximum of Rs.40,000/-p.a. However, erroneously, the Tribunal under the impugned award has given a go by to the provisions of Section 163-A of the Motor Vehicles Act and has fixed the notional monthly income of the 1st respondent / claimant at a higher sum of Rs.5,000/-. Admittedly, the 1st respondent / claimant has sustained grievous injuries as a result of an accident caused by a vehicle insured with the appellant/ Insurance



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Company. The nature of injuries sustained by the the 1st respondent /claimant has also not been disputed by the appellant / Insurance Company as seen from the evidence available on record. The Medical Board had assessed the disability of the 1st respondent / claimant at 47%. The 1st respondent / claimant has also appeared in person today, before this Court. Even though the learned counsel for the appellant / Insurance Company has contended before this Court that the 1st respondent / claimant has renewed his driving licence and hence, the disability assessment by the Medical Board at 47% is on the higher side and therefore, according to him it has to be reduced. However, considering the condition of the 1st respondent / claimant, who has appeared in person today, before this Court, this Court notices that the left hand of the 1st respondent / claimant continues to be immobile and he cannot use the left hand freely and therefore, the possibility of him driving a vehicle in the future does not arise, though he may have renewed his Driving Licence subsequent to the date of the accident. Therefore, the assessment of the disability of the 1st respondent / claimant by the Medical Board at 47% is a correct assessment, which does not call for any reduction by this Court. The only modification that is required to be done with regard to the disability compensation is the fixation of the notional monthly income of



the 1st respondent / claimant as per the Section 163-A Schedule which is provided under the Motor Vehicles Act by reducing the notional income of the 1st respondent / claimant to Rs.40,000/-p.a. instead of Rs.5,000/-p.m., erroneously fixed by the Tribunal. In view of the reduction of the notional annual income to Rs.40,000/- by this Court, the compensation towards loss of earning capacity of the 1st respondent / claimant is reduced from Rs.3,19,600/- as per the details given in the Tabular column in paragraph 7. The compensation awarded by the Tribunal under various other heads is a just compensation which does not call for any interference by this Court.

5. Since this Court is awarding disability compensation to the 1st respondent / claimant, the question of granting additional compensation towards loss of earning for five months at Rs.25,000/- as awarded by the Tribunal under the impugned award does not arise. Accordingly, the same is set aside by this Court.

6. Insofar as the compensation awarded by the Tribunal under other heads viz., Pain and suffering, Extra nourishment expenses, Attender charges, Medical expenses, Transport bills and Loss of clothing is concerned, the same is a just compensation and does not call for any interference by this Court.



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7. For the foregoing reasons, the award of the Tribunal is hereby

reduced in the following manner :

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
Compensation * Rs.5,000 x 12 = Rs.60,000 x 17 = Rs.10,20,000 47% of Rs.10,20,000/- # Rs.40,000/- x 17 x 47%	4,79,400 *	3,19,600 #
Loss of earning for 5 months (Rs.5,000 x 5)	25,000	-
Pain and suffering	40,000	40,000
Extra nourishment expenses	35,000	35,000
Attender charges	20,000	20,000
Medical expenses	1,74,422	1,74,422
Transport bills	10,000	10,000
Loss on clothing	1,000	1,000
Total	7,84,822/-	6,00,022

8. In the result, the appeal filed by the appellant / Insurance Company stands partly allowed by reducing the compensation from Rs.7,84,822/- to Rs.6,00,022/-, as indicated above. No costs. Consequently, connected miscellaneous petition is closed.



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9. The appellant / Insurance Company is directed to deposit the entire award amount (reduced amount) as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of MCOP No.1247 of 2014 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court at Dharmapuri, within a period of eight 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 1st respondent / claimant, through RTGS, within a period of two weeks thereafter.

10. It is made clear that the appellant / Insurance Company is permitted to withdraw the excess award amount, if any deposited by them before the Tribunal.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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ABDUL QUDDHOSE, J.

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To

1. The Sub Judge,
Special Subordinate Court,
Motor Accidents claims Tribunal,
Dharmapuri.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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