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C.M.A.No.241 of 2017
and C.M.P.No.1561 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.241 of 2017

and

C.M.P.No.1561 of 2017

M/s. National Insurance Company Limited,
Salem - 1.

... Appellant

.Vs.

1.R.Venkatesan
2.S.Vijay Venkatesh
3.Maheswari
4.Shriram General Insurance Company Limited,
RICO Industrial Estate,
Jaipur, Rajasthan - 302 022.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.10.2012 in M.C.O.P.195 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Salem.

For Appellant : Mr.K.Padmanabhan

For RR1 to 3 : No appearance

For R4 : Ms.R.Sreevidhya



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JUDGMENT

The appellant, the National Insurance Company Limited, Salem, is the second respondent in M.C.O.P.195 of 2010 on the file of the Motor Accident Claims Tribunal, Salem. 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 30.08.2009.

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

On 30.08.2009, the claimant was travelling as a passenger in a bus bearing Registration Number TN-30-AD-5332 on Salem - Attur road. The driver of the bus drove the bus in a rash and negligent manner and hit a lorry bearing Registration Number TN-28-AD-2601, as a result of which, the claimant sustained injuries. He was immediately rushed to Government Hospital, Attur. After getting first aid in the said hospital, he got himself admitted in Ganga Medical Centre and Hospital Private Limited, Coimbatore, where he was treated as an inpatient for eleven days.



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3. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration Number TN-30-AD-5332 was the cause of the accident and that since the said bus was insured with the present appellant, the National Insurance Company Limited, both the owner of the bus and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the bus, owner of the lorry and the fourth respondent (insurer of the lorry) remained absent and were set *ex parte*. The appellant, the National 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 06.10.2012, fastened negligence on the part of the driver of the bus bearing Registration Number TN-30-AD-5332 and further held that the owner of the bus and the insurer are jointly and severally liable to pay compensation of Rs.4,17,865/- to the claimant, together with interest at the rate of 7.5% per annum from the date



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of petition till the date of realisation. The Tribunal dismissed the claim petition as against the owner of the lorry (third respondent) and its insurer (fourth respondent).

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

7. Heard Mr.K.Padmanabhan, learned counsel for the appellant and Ms.R.Sreevidhya, learned counsel for the fourth respondent.

8. Mr.K.Padmanabhan, learned counsel for the appellant contended that the Tribunal had awarded exorbitant amount of Rs.2,00,000/- towards pain and sufferings and the same has to be scaled down.

9. Though notice was served on the respondents 1 to 3 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 discharge summary (Ex.P3) issued by Ganga Medical Centre and Hospital Private Limited, Coimbatore, shows that the claimant had sustained the following injuries :

Diagnosis

Dept.No.H/1575/09

- 1. 2 days old operated case of fracture olecranon with tension band wiring insitu*
- 2. Comminuted fracture distal 1/3 of radius with K wire insitu*
- 3. Multiple sutured wound present over posterior aspect of arm and dorsum of forearm*
- 4. 5 cm sutured wound present over dorsum of right wrist*

He was admitted as an inpatient from 02.09.2009 to 12.09.2009. Dr.V.Muthusamy (P.W.2) assessed the partial permanent disability of the claimant as 45%. It is pertinent to point out that P.W.2 is not the doctor who gave treatment to the claimant. Under this circumstance, the Tribunal reduced the disability to 30%. Since there is no functional disability, the Tribunal fixed a sum of Rs.2,000/- per percentage of disability and awarded a sum of Rs.60,000/- towards partial permanent disability, which cannot be said to be on the higher side. It is true that the Tribunal had awarded an



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exorbitant amount of Rs.2,00,000/- towards pain and sufferings and therefore, it is scaled down to Rs.1,00,000/-. The following tabular column would show the amount awarded by the Tribunal and the amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Transport to Hospital	5,000/-	5,000/-
2.	Extra nourishment	5,000/-	5,000/-
3.	Pain and sufferings	2,00,000/-	1,00,000/-
4.	Partial permanent disability	60,000/-	60,000/-
5.	Damage to clothes	1,000/-	1,000/-
6.	Medical expenses	1,46,615/-	1,46,615/-
7.	X-ray bill	250/-	250/-
TOTAL		Rs.4,17,865/-	Rs.3,17,865 /-

11. Thus, the compensation awarded by the Tribunal is hereby scaled down to Rs.3,17,865/- 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 partly allowed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

ii. The compensation awarded by the Tribunal is hereby scaled down to Rs.3,17,865/-.

iii. The appellant, the National Insurance Company Limited is directed to deposit the modified award amount i.e. Rs.3,17,865/- (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 within a period of four weeks from the date of receipt of a copy of this order / uploading of this order to the credit of M.C.O.P.195 of 2010 on the file of the Motor Accident Claims Tribunal, II Additional Sub Court, Salem.



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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



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To

1.The Motor Accident Claims Tribunal,
II Additional Sub Court, Salem.

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

3.Shriram General Insurance Company Limited,
RICO Industrial Estate,
Jaipur, Rajasthan - 302 022.



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R. HEMALATHA, J.

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