



C.M.A.No.1398 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1398 of 2021
and C.M.P.No.7204 of 2021

National Insurance Co. Ltd.,
Rep. by its Branch Manager,
Jerome Building, 1st Floor,
Fort Station Road,
Trichy – 620 002.

...Appellant

Vs.

1.G.Dhanalakshmi

2.M.Rangasamy

*(The 2nd respondent herein remained
exparte before the lower court,
notice may be dispensed with)*

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicles Act, 1988, against the Judgment and Decree passed in



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M.C.O.P.No.17 of 2017 on 28.11.2017 on the file of the learned Motor Accident Claims Tribunal (Special Sub Judge) Krishnagiri.

For Appellant : Mr.J.Chandran
For Respondent : Mr.V.Kumaravelan for R1

J U D G M E N T

This appeal is filed by the appellant Insurance Company challenging the Judgment and Decree passed by the learned Motor Accident Claims Tribunal (Special Sub Judge) Krishnagiri. in M.C.O.P.No.17 of 2017 dated 28.11.2017.

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioner is the claimant, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company.



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4. According to the petitioner, on 19.01.2017 at noon, the petitioner was proceeding to Karimanagalam in the TVS Super Excel Moped bearing Registration No.TN-55-E-0610. At about 13.00 hours, the petitioner was riding the moped to near Seekalahalli Pirivoo Road in Dharmapuri – Krishnagiri Road, at the same time, a Car bearing Registration No.TN-45-AP-6021 belonging to the first respondent and insured with the second respondent was coming from East to West. Due to the rash and negligent driving by the driver of the car had lost his control and dashed against the moped of the petitioner. Due to that impact, the petitioner had fallen down from the moped and had sustained injuries. Immediately after the accident, the petitioner was taken to the Government Dharmapuri Medical College, Hospital and thereafter, admitted as an inpatient in Ganga Medical Centre and Hospital, Coimbatore from 19.01.2017 to 24.01.2017. The petitioner filed a claim petition in M.C.O.P.No.17 of 2017 before the Tribunal, the Tribunal has awarded a sum of Rs.12,22,000/- as compensation. Aggrieved by the same, the present appeal has been filed.



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5.Learned counsel appearing for the appellant submitted that in the absence of continuous medical treatment records after 5 days treatment on 24.01.2017, instead of awarding disability assessed by the Medical Board Ex.C1 at 30%, the Tribunal taken into consideration as whole body permanent and total disability for throughout life in awarding compensation. He further submitted that considering the fact that the accident occurred on 19.01.2017 and discharged on 24.01.2017 from the hospital. However, the compensation awarded by the Tribunal in all heads is very excessive and he prays for appropriate orders.

6.Learned counsel appearing for the first respondent submitted that the accident happened due to the rash and negligent driving by the driver of the car who had lost his control and dashed the petitioner. Due to that impact, the petitioner had fallen down from the vehicle and had sustained injuries. The criminal case was registered against the car driver in Crime No.40/2017 under Section 279, 337 of IPC by Karimangalam Police. Hence, he prayed for dismissal of the appeal.



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

8.The accident and the manner in which the accident happened are not disputed. This appeal has been filed only questioning the quantum of compensation.

9.Before the Tribunal, the petitioner was examined as PW1 and on the side of the petitioner, 7 documents were marked as Exs.P1 to P7. On the side of the respondents, no witness was examined and no document was marked. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

10.The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.9,72,000/- for loss of earning capacity, Rs.79,000/- for medical expenses, Rs.10,000/- for future medical expenses, Rs.10,000/- for transportation, nutrition & attender charges, Rs.50,000/-



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for pain and suffering Rs.1,00,000/- for loss of amenities & enjoyment of life, Rs.1,000/- for damages to clothing & articles and arrived at a total compensation of Rs.12,22,000/- with interest at the rate of 9% p.a. from the date of petition till the date of realization.

11.The amount awarded under the head loss of earning, contrary to law laid by the Hon'ble Apex Court in the case of ***Raj Kumar vs. Ajay Kumar***, in the absence of any functional disability awarding compensation adopting the multiplier method is not sustainable. Hence, in the opinion of this Court is excessive and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded under the head loss of earning is reduced to Rs.2,10,000/- from Rs.9,72,000/-. The amount awarded under the head future medical expenses, transportation, nutrition & attender charges and pain and suffering, in the opinion of this Court is very meagre and this Court is inclined to enhance the amount awarded under the said heads. Accordingly, the amount awarded under the head future medical expenses is enhanced to Rs.1,00,000/- from Rs.10,000/-. Accordingly,



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the amount awarded under the head transportation, nutrition & attender charges are enhanced to Rs.50,000/- from Rs.10,000/-. Accordingly, the amount awarded under the head pain and suffering is enhanced to Rs.75,000/- from Rs.50,000/-. The amount awarded under the head damages to the clothing and articles, in the opinion of this Court is just and reasonable. This Court is not inclined to award any amount for loss of amenities and enjoyment in life.

12. Accordingly, the compensation awarded by the Tribunal is re-assessed as follows:

S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	30% loss of earning power (30% x 7,000 = Rs.2,10,000/-)	9,72,000/-	2,10,000/-
2.	Medical expenses	79,000/-	79,000/-
3.	Future medical expenses	10,000/-	1,00,000/-
4.	Transportation, Nutrition & Attender charges	10,000/-	50,000/-
5.	Pain and suffering	50,000/-	75,000/-



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6.	Loss of Amenities and Enjoyment in life	1,00,000/-	-
7.	Damages to clothing and articles	1,000/-	1,000/-
	Total	Rs.12,22,000/-	Rs.5,15,000/-

13.The claimant is entitled to a sum of Rs.5,15,000/- along with interest at the rate of 9% p.a. from the date of petition till the date of realization.

14.The judgment and decree passed by the Motor Accident Claims Tribunal/(Special Sub Judge) Krishnagiri in M.C.O.P.No.17 of 2017 dated 28.11.2017, is modified to the above extent.

15.The appellant Insurance Company is directed to deposit the modified/enhanced award amount, if not deposited earlier before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment and permitted to withdraw the excess amount, if any. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount with accrued interest and proportionate costs, after



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deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal. The appellant insurance company is permitted to withdraw the balance amount, if any.

16.The first respondent/claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal.

17.The Civil Miscellaneous Appeal is partly allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

05.12.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accidents Claims Tribunal,
(Special Sub Judge) Krishnagiri.

2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



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M.DHANDAPANI, J.

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