



C.M.A.No.4368 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.4368 of 2019

And

C.M.P.No.24880 of 2019

ICICI Lombard General Insurance Company Limited
ICICI Lombard House,
414, Vir Savagar Marketing
Shitthi Vinayagar Koil (Near)
Praba Devi, Mumbai – 400 002.
Maharashstra.

... Appellant

Vs.

1.Muthamilselvan
2.R.Anbu

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2014 made in M.C.O.P.No.532 of 2013, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate at Perambalur.

For Appellant : Mr.R.Sree Vidhya

For Respondents : R1 – No Appearance

R2 – NDW vide order dt.17/4/23

J U D G M E N T

The second respondent before the Motor Accidents Claims



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Tribunal is the appellant herein. This appeal has been filed against the judgment and decree dated 26.06.2014 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate at Perambalur, in M.C.O.P.No.532 of 2013.

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 08.07.2013 at about 1.00 p.m., the first respondent was riding the motorcycle bearing Registration No.TN-46-M-9722 in Perambalur from West to East direction near Eariyur Pathai Pirivu Road. At that time the lorry bearing Registration No.TN-68-J-3244 belonging to the second respondent and insured with the appellant came in the opposite direction 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.18,74,159/- as compensation to the claimant along with interest at 7.5% p.a. from the date of petition till the date of deposit with costs and directed the appellant to deposit the award amount.



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3.The learned counsel appearing for the appellant further submitted that aggrieved by the quantum of compensation awarded by the Tribunal, this appeal has been filed. The learned counsel further submitted that the Medical Board did not assess the disability of the claimant and P.W.3 – Doctor assessed the disability of the claimant as 60% partial permanent disability, however, the Tribunal arrived at a conclusion that claimant suffered 58% functional disability and 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 and further submitted that the amount awarded under the other heads are also on the higher side.

4.Heard the learned counsel appearing for the appellant. Though the name of the first respondent has been printed in the cause list, there is no representation for the first respondent. Considering the pendency of the civil miscellaneous appeal, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

5.The accident and the manner in which the accident happened



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are not disputed. This appeal has been filed only questioning the quantum of compensation. Hence, there is no need for any discussion with regard to negligence aspect.

6.The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.15,38,160/- for disability, Rs.20,000/- for pain and sufferings, Rs.3,000/- for extra nourishment, Rs.3,000/- for attendant charges, Rs.2,73,199/- for medical expenses, Rs.11,800/- for transportation, Rs.25,000/- for claimant's tips and arrived at a total compensation of Rs.18,74,159/- with interest at the rate of 7.5%p.a. from the date of petition till the date of deposit.

7.Perusal of records disclose that the claimant did not suffer any amputated injury or any neurological difficulty and P.W.3 – Doctor assessed the disability of the claimant as 60% partial permanent disability. Hence, the Tribunal ought to have followed the decision of the Hon'ble Apex Court reported in *(2011) 1 SCC 343 [Raj Kumar Vs. Ajay Kumar and Ors.]*, however, without following the guidelines issued in the said decision, in the absence of functional disability the Tribunal mechanically passed the award by applying multiplier method, which is not sustainable one.



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8.The Tribunal has awarded compensation under the head for claimant's tips. Such award is impermissible. Hence, the amount awarded under the said head is deleted. In the present case, the amount awarded under the head attendant charges, in the opinion of this Court is not necessary and hence, the amount awarded under the said head is also deleted. This Court is of the opinion that some amount has to be awarded for loss of income during the treatment period. Accordingly, this Court awards a sum of Rs.30,000/- for loss of income during the treatment period.

9.The Doctor has assessed the disability of the injured claimant as 60%. At the relevant point of time Rs.4,000/- per percentage of disability was awarded. Hence, amount awarded for disability works out to Rs.2,40,000/- [60% X Rs.4,000/- = Rs.2,40,000/-].

10.The amount awarded under the heads extra nourishment, pain and sufferings, 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 extra nourishment is enhanced to Rs.20,000/- from Rs.3,000/-, the amount awarded for pain and



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sufferings is enhanced to Rs.50,000/- from Rs.20,000/-. The amount awarded under the head transportation, in the opinion of this Court is on the higher side and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded for transportation is reduced to Rs.10,000/- from Rs.11,800/-. The amount awarded under the head Medical expenses 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.	Disability	Rs.15,38,160/-	Rs.2,40,000/-
2.	Extra nourishment	Rs. 3,000/-	Rs. 20,000/-
3.	Transportation	Rs. 11,800/-	Rs. 10,000/-
4.	Pain and sufferings	Rs. 20,000/-	Rs. 50,000/-
5.	Medical expenses	Rs. 2,73,199/-	Rs.2,73,199/-
6.	Loss of income during treatment period	---	Rs. 30,000/-
7.	Claimant's tips	Rs. 25,000/-	---
8.	Attendant charges	Rs. 3,000/-	---
	Total	Rs.18,74,159/-	Rs.6,23,199/-

12.The first respondent claimant is entitled to total compensation of Rs.6,23,199/- along with interest at the rate of 7.5%



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p.a. from the date of petition till the date of deposit.

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13.The civil miscellaneous appeal is partly allowed. The judgment and decree dated 26.06.2014 passed by the Motor Accidents Claims Tribunal, Chief Judicial Magistrate at Perambalur, in M.C.O.P.No.532 of 2013, is modified to the above extent.

14.The appellant Insurance Company 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. 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. The appellant Insurance Company is permitted to withdraw the excess amount, if any, already deposited by them.

15.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

M.DHANDAPANI,J.

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To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate at Perambalur.

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