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C.M.A.No.1195 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 20.12.2024**

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

**C.M.A.No.1195 of 2020**

**and**

**C.M.P.No.7442 of 2020**

The New India Assurance Company Ltd.,  
New Delhi

... Appellant

Vs.

1. Mohan  
2. P.Muthu Rathinam  
(R2 Ex-parte in Labour Court)

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 23.08.2012 made in MACTOP No.863 of 2010 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Judge) at Thiruppur, Thiruppur District.

For Appellant : M/s.P.G.Padmanabhan

For Respondents : Mr.N.Ponraj for R2  
No appearance for R1

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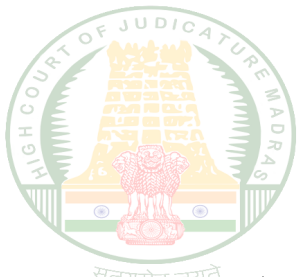
## **JUDGMENT**

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The above appeal is filed by the appellant / insurance company challenging the compensation awarded by the Motor Accidents Claims Tribunal (Additional District and Sessions Judge) at Thiruppur, Thiruppur District in the Judgment and decree dated 23.08.2012 in MACTOP No.863 of 2010.

2. In view of the judgment being passed, notice to the first respondent is dispensed with.

3. It is the case of the first respondent / claimant that, on 09.05.2010, at about 8.45 p.m, when the claimant was riding a two wheeler bearing Regn.No.TN 39 A F 3039 along with one Sankar, at that time a car bearing Regn.No.TN 41 AA 2535, driven by its driver belonging to the second respondent came in a rash and negligent manner and had dashed the two wheeler driven by the first respondent, due to which, the claimant sustained grievous injuries all over his body. Claiming compensation in a sum of Rs.7,00,000/-, two claim petitions have been filed by the rider / first respondent and pillion rider of the



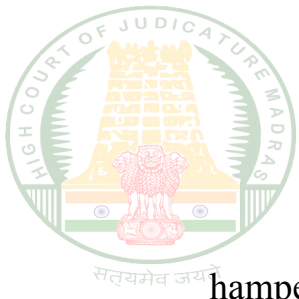
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motor cycle in M.C.O.P.Nos.852 and 863 of 2010 respectively.

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4. Before the Tribunal, the first respondent / claimant and the pillion rider have examined P.W.1 to P.W.4 and marked Exs.P.1 to Ex.P.8. On the side of the appellant / insurance company, they have neither examined any documents nor marked any exhibits. After adjudication, the Tribunal passed a common award granting a sum of Rs.14,750/- as compensation in favour of the pillion rider one Sankar in M.C.O.P.No.852 of 2010 and Rs.3,74,080/- in favour of the first respondent / claimant in M.C.O.P.No.863 of 2010 and held that the appellant and the second respondent are jointly and severally liable to pay the above compensation. Challenging the same, the appellant / insurance company has preferred the present appeal arising out of M.C.O.P.No.863 of 2010.

5. The learned counsel appearing for the appellant / insurance company submitted that as per the disability certificate issued by the independent Doctor, the percentage of disability is 37% partial permanent disability which is not functional in nature and the same would not



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hamper the first respondent from doing his day to day work. However, contrary to the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, the Tribunal has fixed 37% functional disability under the head “Loss of income” by adopting multiplier method which is *per se* unsustainable. However, the compensation awarded under other heads are also highly excessive, which warrants interference.

6. Heard the learned counsel appearing for the second respondent and perused the materials placed on record.

7. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same. On a perusal of the records reveals that as per the Disability Certificate / Ex.P.2, the independent Doctor assessed the disability of the claimant/ first respondent at 37%. On a perusal of the injuries sustained by the first respondent, reveals that there is no functional disability and the same would not hamper him from doing his day to day work. However,



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contrary to the judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, the Tribunal has fixed 37% functional disability and awarded compensation under the head “Loss of income” by adopting multiplier method which is *per se* unsustainable.

8. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the first respondent, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore, this Court is inclined to adopt percentage method to arrive at the compensation to be given to the claimant.

9. However, considering the age and nature of injury sustained by the first respondent and the extent of the disability would not really hamper the first respondent from discharging his day to day duties, this Court fixes Rs.2,000/- per percentage of disability. Therefore, the compensation awarded under the head “Loss of income” is modified to



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Rs.74,000/- (37% \* 2000=74,000/-).

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10. A sum of Rs.15,000/-, Rs.2,000/- and Rs.2,000/- have been awarded under the heads “Pain and suffering”, “Extra nourishment” and “Transportation” which are on the lower side and the same are enhanced to a sum of Rs.30,000/-, Rs.25,000/- and Rs.10,000/- respectively. This Court feels that the compensation awarded under the head “loss of amenities” is not sustainable. Hence the same is dis-allowed. No amount has been granted under the head “loss of income during treatment period”, hence a sum of Rs.20,000/- is awarded under the said head. No amount has been granted under the head “attender charges”, hence a sum of Rs.10,000/- is granted under the said head. This Court finds that the compensation awarded under the head “medical bills” is just and reasonable and does not require any interference.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-



| <i>S.No.</i> | <i>Description</i>                        | <i>Awarded by<br/>the Tribunal<br/>(Amount in<br/>Rs.)</i> | <i>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</i> |
|--------------|-------------------------------------------|------------------------------------------------------------|----------------------------------------------------------|
| 1            | Loss of income                            | 3,39,660/-                                                 | <b>74,000/-</b>                                          |
| 2            | Pain and suffering                        | 15,000/-                                                   | <b>30,000/-</b>                                          |
| 3            | Extra Nourishment                         | 2,000/-                                                    | <b>25,000/-</b>                                          |
| 4            | Transportation                            | 2,000/-                                                    | <b>10,000/-</b>                                          |
| 5            | Loss of amenities                         | 15,000/-                                                   | -                                                        |
| 6            | Medical bills                             | 420/-                                                      | 420/-                                                    |
| 7            | Attender charges                          | -                                                          | <b>10,000/-</b>                                          |
| 8            | Loss of income during<br>treatment period | -                                                          | <b>20,000/-</b>                                          |
|              | Total                                     | 3,74,080/-                                                 | 1,69,420/-                                               |

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.863 of 2010 is modified by deducting the compensation amount from **Rs.3,74,080/-** to **Rs.1,69,420/-**. The Appellant Insurance is directed to deposit the said amount to the credit of MCOP.No.863 of 2010 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) 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



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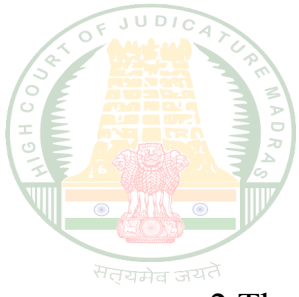
bank account of the first respondent/claimant through RTGS within a period of two weeks thereafter. The appellant is permitted to withdraw the excess amount if any deposited by them before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

**20.12.2024**

Index : Yes / No  
Speaking order / Non-speaking order  
Netrual Citation Case : Yes / No  
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To

1. Motor Accidents Claims Tribunal (Additional District and Sessions Judge) at Thiruppur, Thiruppur District.



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2. The Section Officer, V.R.Section, High Court, Madras.

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**M.DHANDAPANI, J.**



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