



C.M.A.(MD) No.350 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.350 of 2024

and

Cross. Objection (MD)No.17 of 2024

and

C.M.P.(MD)No.4745 of 2024

In C.M.A.(MD)No.350 of 2024:

ICICI Lombard General Insurance Company Limited,
through its Divisional Manager,
having it office at D.No.755-A, I Floor,
Tirupura Arcade, Tiruvendrum High Road,
Palayamkottai,
Tirunelveli – 627 002.

... Appellant

Vs.

1.R.Nehru,
Kutti @ Shanmugam (died),
2.Sakthi Prakash,

... Respondents

Prayer: Civil Miscellaneous Appeals filed Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.09.2023 passed in M.C.O.P.No.49 of 2017, on the file of the Motor Accidents Claims Tribunal/Subordinate Court, Sankarankovil, Tirunelveli.



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For Appellant : Mr.V.Muthu Kamatchi

For Respondents

for R1 : Mr.D.Siva raman

for R2 : Dispensed with

In Cross Objection (MD)No.17 of 2024:

R.Nehru

... Appellant

vs.

1. ICICI Lombard General Insurance Company Limited,
through its Divisional Manager,
having it office at D.No.755-A, I Floor,
Tirupura Arcade, Tiruvendrum High Road,
Palayamkottai,
Tirunelveli – 627 002.

Kutti @ Shanmugam (died),

2.Sakthi Prakash,

... Respondents

Prayer: Cross Objection filed under Order XLI Rule 22 of C.P.C against
C.M.A(MD)No.350 of 2024 filed by the first respondent herein.

For Appellant : Mr.D.Siva raman

For Respondents

for R1 : Mr.V.Muthu Kamatchi

for R2 : Dispensed with



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COMMON JUDGMENT

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The appeal has been filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal. The Cross Objection has been filed by the claimant/first respondent seeking enhancement of the compensation.

2. For the sake of convenience, the parties are referred to as per their ranking in C.M.A.(MD)No.350 of 2024.

3. The first respondent filed a claim petition before the Tribunal stating that while he was riding a motor cycle, he stopped the motor cycle on the left side of the road to talk to his friend; that at that time, a car insured with the appellant bearing registration No.TN-79-B-1071 came in a rash and negligent manner and dashed against him, as a result of which he sustained grievous injuries.

4. The owner/driver of the car filed a counter stating that the averments in the claim petition are false; and that in any case the



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compensation claimed was excessive.

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5. The appellant filed a counter stating that the driver of the insured vehicle did not have a valid licence and therefore, they are not liable to pay any compensation.

6. Before the Tribunal, the first respondent/claimant examined himself as P.W.1 and the doctor as P.W.2 and marked Exs.P1 to P17. The appellant examined R.W.1 and R.W.2 and marked Ex.R1. The disability certificate issued by the doctor was marked as Ex.C1.

7. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the negligence of the driver of the insured vehicle and directed the appellant to pay compensation of Rs.7,10,700/- under various heads.

8. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is excessive inasmuch as a sum of Rs.2,50,000/- was awarded towards pain and sufferings and the compensation under the other heads is also excessive.



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9. The learned counsel for the first respondent/cross-objector submitted that he is a practising lawyer and he had suffered loss of income for more than six months and the income adopted by the Tribunal at Rs.12,000/- p.m. is meagre; and that no compensation was awarded under the head 'future medical expenses' and therefore, the compensation is to be enhanced.

10. Since the appeal and the cross-objection are with regard to the quantum of compensation, notice to the second respondent is dispensed with.

11. The only point for consideration in the instant appeal is *'whether the compensation awarded by the Tribunal is just and reasonable?'*

12. The disability certificate-Ex.C1 would show that the first respondent had suffered disability to the extent of 30%. The finding of the Tribunal by adopting percentage method cannot be faulted as the first respondent had not established that he had suffered functional disability. This Court is of the view that since the accident is of the year 2017, the



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first respondent would be entitled to Rs.6,000/- for a percentage of disability. Hence, the compensation under the head 'partial permanent disability' is enhanced to Rs.1,80,000/- (30% x Rs.6,000/-).

13. The Tribunal had awarded the compensation of Rs.2,50,000/- under the head 'pain and sufferings'. Considering the nature of the injuries, namely, the first respondent had suffered bimalleolar fracture (RT) and the disability percentage is 30%, this Court is of the view that the compensation under the head 'pain and sufferings' at Rs.2,50,000/- is excessive and it would be just and reasonable to award Rs.1,50,000/- under the head 'pain and sufferings'.

14. The evidence of the doctor-PW.2 would show that while conducting surgery for treatment of the fracture, plates and screws were fixed; that if the first respondent wishes to remove the plates and screws, one more surgery has to be conducted; and that the first respondent would also require physiotherapy. The first respondent has not produced any proof as regards the expenses for the surgery for removal of the plates and screws. Considering the above facts, this Court is of the view that it would be just and reasonable to award Rs.50,000/- under the head 'future medical expenses'.



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15. The first respondent would establish that he was a practising lawyer with 30 years experience. Hence, the income fixed by the Tribunal at Rs.12,000/- p.m. is very low. Considering the age of the first respondent and the fact that he is practising as a lawyer and he could not pursue his profession for six months, this Court is of the view that a sum of Rs.1,80,000/- can be awarded towards 'loss of income'. Thus, the award is modified as follows:

Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Partial Permanent Disability	Rs.1,50,000/-	Rs.1,80,000/-	Enhanced
2	Pain and sufferings and mental agony	Rs.2,50,000/-	Rs.1,50,000/-	Reduced
3	Attendant charges/ bystander charges	Rs. 25,000/-	Rs. 25,000/-	Confirmed
4	Transport charges	Rs. 25,000/-	Rs. 25,000/-	Confirmed
5	Nutrition charges	Rs. 25,000/-	Rs. 25,000/-	Confirmed
6	Medical expenses	Rs.1,50,700/-	Rs.1,50,700/-	Confirmed
7	Loss of income	Rs. 72,000/-	Rs.1,80,000/-	Enhanced
8	Loss of amenities	Rs. 10,000/-	Rs. 10,000/-	Confirmed
9	Damages to clothes	Rs. 3,000/-	Rs. 3,000/-	Confirmed
10	Future medical expenses	---	Rs. 50,000/-	Granted
Total		Rs.7,10,700/-	Rs.7,98,700/-	Enhanced by Rs.88,000/-



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16. The Tribunal found that the appellant has established that the driver of the vehicle did not have a valid licence and hence, directed the appellant to pay the compensation at the first instance and then recover it from the second respondent in the appeal/owner of the vehicle. Since the said finding is not under challenge, the same is confirmed.

17. The appellant/Insurance Company is directed to deposit the enhanced award amount of **Rs.7,98,700/-** (Rupees Seven Lakhs Ninety Eight Thousand and Seven Hundred only), together with interest at 7.5% p.a. per annum from the date of the claim petition till the date of realization and proportionate costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

18. On such deposit, the first respondent/claimant is permitted to withdraw the award amount with interest and costs, less the amount already withdrawn, if any, by filing appropriate application before the Tribunal. The first respondent/claimant is directed to pay the necessary Court Fee, if any, on the enhanced amount.



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19. In the result, this Cross-Objection is partly allowed and this

Civil Miscellaneous Appeal is dismissed. No costs.

14.10.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1.The Motor Accidents Claims Tribunal/Subordinate Judge,
Sankarankovil, Tirunelveli.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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