



C.M.A.(MD) No.800 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.800 of 2024

and

C.M.P.(MD) No.8797 of 2024

1.Liberty General Insurance Company Limited,
Through its Branch Manager,
No.88, Gopathi Narayanasamy Chetty Road,
Partha Sarathipuram, T.Nagar,
Chennai - 17.

2.Liberty General Insurance Company Limited,
Through its Branch Manager,
D.No.101/3A, Vishnu Palza,
Ground Floor, Bye Pass Road,
Vannarpettai, Tirunelveli - 627 003.

... Appellants

Vs.

1.D.Mathan
S/o.Daniel

2.S.Mafaz Ahamed
S/o.Samshudeen

... Respondents

[R2 remained *ex parte* before the Tribunal. Notice to him was dispensed with by this Court, *vide* order dated 12.07.2024.]

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the award passed in M.C.O.P.No.481 of



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2021 on the file of the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli, dated 06.02.2024.

For Appellants : Mrs.K.R.Shivashankari

For R1 : Mr.R.Murugan

J U D G M E N T

The appellants have challenged the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Sub Judge), Tirunelveli, *vide* its Judgment and Decree dated 06.02.2024.

2. The first respondent filed a claim petition before the Tribunal, stating that on 29.10.2019 at about 22.30 hrs., while he was riding his motorcycle bearing Registration No.TN-03-J-9119 on the extreme left side of the road, another motorcycle bearing Registration No.TN-10-AC-5067, owned by the second respondent herein and insured with the appellants, came in the opposite direction in a rash and negligent manner and dashed against the first respondent, as a result of which he sustained grievous injuries.



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3. The second respondent herein, the owner of the insured motorcycle, remained *ex parte* before the Tribunal.

4. The appellants, Insurance Company, filed a counter before the Tribunal, stating that the accident did not take place due to the rash and negligent riding of the rider of the insured motorcycle and that in any case, the compensation claimed was excessive.

5. Before the Tribunal, the first respondent/injured claimant examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and marked Exs.P1 to P10. Apart from the above, the Discharge Summary, the Wound Certificate and the Letter of the Superintendent of Police, Dindugal, along with the details of Last Pay drawn by the deceased, were marked as Exs.X1 to X3. The Disability Certificate was marked as Ex.C1. The appellant neither examined any witnesses nor marked any documents.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the claimant had suffered 80% disability and, by adopting the percentage method, awarded the compensation of



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Rs.4,00,000/- under the head 'loss of disability' and total compensation of

Rs.13,54,473/- payable by the appellants.

7. The learned counsel for the appellants submitted that the appeal has been filed only with regard to the quantum of compensation awarded by the Tribunal; that they have not challenged the finding on negligence; and that the compensation under the heads 'pain and suffering', 'loss of convenience', 'attendant charges', and 'extra nourishment' is excessive.

8. The point for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

9. Admittedly, the first respondent had suffered disability of 80%. However, since the claimant had not established the functional disability, the tribunal adopted percentage method and awarded a compensation of Rs.4,00,000/- [Rs.5,000/- x 80] under the head 'loss of disability'. Thus, the award of compensation under the head 'loss of disability' is justified.

10. The first respondent had also established that he had availed medical leave and suffered loss of pay to the tune of Rs.3,43,151/-. P.W.3,



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the District Superintendent of Police, in whose office the first respondent was working as a constable, had deposed that the first respondent had availed medical leave for 755 days and Rs.3,43,151/- was recovered from him for the excess payment made to him for those leave days. Thus, the award of the Tribunal under the head 'loss of income' is justified.

11. The award of compensation under the head 'medical expenses' is based on the medical bills furnished by the first respondent, namely, Exs.P2 and P3, and hence, the said compensation is justified. The award of the compensation under the head 'transport expenses' is also justified.

12. As regards the award of compensation under the other heads, namely, 'pain and suffering', 'loss of convenience', 'attendant charges', and 'extra nourishment', this Court is of the view that they can be marginally reduced, considering the nature of injuries. Thus, the compensation under the heads 'pain and suffering' and 'loss of convenience' is reduced to Rs. 75,000/- each. Similarly, the award of compensation under the head 'attendant charges' is reduced to Rs.50,000/-, and the compensation under the head 'extra nourishment' is reduced to Rs.25,000/-. Thus, the total



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compensation awarded by the Tribunal is modified as follows:

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<i>Sl. No</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or reduced</i>
1	Disability Rs.5,000/- x 80%	Rs.4,00,000/-	Rs.4,00,000/-	Confirmed
2	Loss of Income	Rs.3,43,151/-	Rs.3,43,151/-	Confirmed
3	Medical Expenses	Rs.2,11,322/-	Rs.2,11,322/-	Confirmed
4	Pain and Suffering	Rs.1,00,000/-	Rs. 75,000/-	Reduced
5	Loss of convenience	Rs.1,00,000/-	Rs. 75,000/-	Reduced
6	Transport Expenses	Rs. 50,000/-	Rs. 50,000/-	Confirmed
7	Attendant Charges	Rs.1,00,000/-	Rs. 50,000/-	Reduced
8	Extra Nourishment	Rs. 50,000/-	Rs. 25,000/-	Reduced
Total		Rs.13,54,473/-	Rs.12,29,473/-	Reduced by Rs.1,25,000/-

13. The appellants shall deposit the reduced amount of Rs. 12,29,473/- together with interest at 7.5% per annum from the date of filing the claim petition, i.e., on 01.03.2021, till the date of realization and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.

14. On such deposit, the first respondent/injured claimant is permitted to withdraw the same along with interest and costs, less the



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amount already withdrawn, if any, by filing an application before the

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Tribunal.

15. The appellants are permitted to withdraw the excess amount, if any lying in the deposit to the credit of M.C.O.P.No.481 of 2021.

16. In the result, this Civil Miscellaneous Appeal is partly allowed.
No costs. Consequently, the connected Miscellaneous Petition is closed.

03.09.2024

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order

JEN

Copy To:

1.The Special District Judge,
Motor Accident Claims Tribunal,
Tiruchirappalli,
Tiruchirappalli District.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras high Court, Madurai.



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SUNDER MOHAN, J.

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