



C.M.A.No.389 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.389 of 2013

National Insurance Company Limited,
Divisional Office, 1st Floor,
No.18, Court Street,
Kumaran Road Corner, Tiruppur.

... Appellant

Vs.

1. Raghuraman

2. Muthuraj

3. Murugan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree passed in MACTOP.No.82 of 2008 dated 22.07.2010 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur.

For Appellant : M/s.N.B.Surekha

For Respondents : Mr.M.A.P.Thangavel for R1



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JUDGMENT

The above appeal is filed by the appellant / insurance company challenging the compensation awarded by the Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur in the Judgment and decree dated 22.07.2010 in MACTOP.No.82 of 2008.

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

3. It is the case of the first respondent / claimant that, on 09.09.2007, at about 6.30 p.m, when the claimant was walking on the road, at that time a two wheeler bearing Regn.No.TN 39 AM 3404, driven by the second respondent belonging to the third respondent came in a rash and negligent manner and had dashed the claimant, due to which, the claimant sustained grievous injuries all over his body. Claiming compensation in a sum of Rs.5,00,000/-, the claim petition has been filed by the claimant.



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4. Before the Tribunal, the first respondent / claimant had examined P.W.1 to P.W.3 and marked Exs.P.1 to Ex.P.7. On the side of the appellant / insurance company, they have examined R.W.1 and marked R.1 and R.2. After adjudication, the Tribunal awarded a sum of Rs.3,38,100/- as compensation to the claimant to be payable by the appellant / insurance company. Challenging the same, the appellant / insurance company has preferred the present appeal.

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 43% partial permanent disability which is not functional in nature and the same would not hamper the claimant 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 various other heads are also



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highly excessive, which warrants interference.

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6. The learned counsel appearing for the first respondent / claimant submits that by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

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.6, the independent Doctor assessed the disability of the claimant/ first respondent at 43%. On a perusal of the injuries sustained by the claimant, reveals that there is no functional disability and the same would not hamper the claimant 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% under the head “Loss of income” by adopting



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multiplier method which is *per se* unsustainable.

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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 claimant, 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. Though the Doctor assessed the disability of the appellant at 43%, however, the percentage of disability varies from Doctor to Doctor. Hence, this Court is inclined to fix the disability of the appellant at 40% . Considering the age and nature of injury sustained by the claimant and the extent of the disability would not really hamper the claimant 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 Rs.80,000/- (40% *



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2000=80,000/-).

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10. A sum of Rs.15,000/-, Rs.2,000/- and Rs.1,000/- have been awarded under the heads “Pain and suffering”, “Extra nourishment”, “Transportation” which are on the lower side and the same are enhanced to a sum of Rs.30,000/-, Rs.10,000/- and Rs.5,000/- 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.8,000/- is awarded under the said head. No amount has been granted under the head “attender charges”, hence a sum of Rs.5,000/- 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 :-



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income	2,84,120/-	80,000/-
2	Pain and suffering	15,000/-	30,000/-
3	Extra Nourishment	2,000/-	10,000/-
4	Transportation	1,000/-	5,000/-
5	Loss of amenities	5,000/-	-
6	Medical bills	31,000/-	31,000/-
7	Attender charges	-	5,000/-
8	Loss of income during treatment period	-	8,000/-
	Total	3,38,120/-	1,69,000/-
	Rounded off	3,38,100/-	1,69,000/-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.82 of 2008 is modified by deducting the compensation amount from **Rs.3,38,100/-** to **Rs.1,69,000/-**. The Appellant Insurance is directed to deposit the said amount to the credit of MCOP.No.82 of 2008 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



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being made, the Tribunal is directed to transfer the award amount directly to the 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.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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1. Motor Accident Claims Tribunal, Principal Subordinate Court, Tiruppur.
2. The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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