



CMA NO.989 OF 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04 / 12 / 2024

JUDGMENT DELIVERED ON : 29 / 04 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.989 OF 2022

AND

CMP NOS.7337 AND 7339 OF 2022

United India Insurance Co. Ltd.,
Represented by its Branch Manager
Office at No.10/18,
Kuppanna Gounder Complex,
Erode Main Road, Velayuthampalayam,
Karur – 639 117.

... Appellant /
2nd Respondent

Vs.

1.R.Yogesh
S/o. R.Ravi
Rep. by his Guardian / Father - R.Ravi
S/o.Ramasamy
Permanently Residing at Door No.7,
Pasupathi Nagar, Pugalur, Karur.
Now Residing at Door No.61/2,
Radhakrishnan Street, Surampatti,
Erode – 638 009.
Erode District.

... 1st Respondent /
Petitioner

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2.M.Manivel
S/o.M.Marappa,
Residing at Door No.17,
Koil Nanapparappu,
Pugalur Sugar Factory Post,
Karur District – 639 113.

... 2nd Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated August 19, 2019 made in M.C.O.P.No.381 of 2017 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Judge, Erode.

For Appellant : Mr.S.Arunkumar

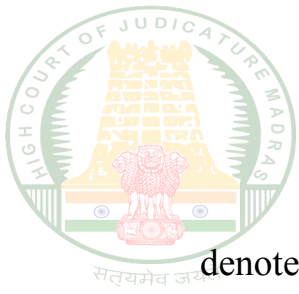
For Respondent-1 : Mr.S.Kaithamalai Kumaran

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated August 19, 2019 passed by the 'Motor Accidents Claims Tribunal / Special Subordinate Judge, Erode' ['Tribunal' for short] in M.C.O.P.No.381 of 2017, the second respondent therein - Insurance Company has preferred this Civil Miscellaneous Appeal praying to set aside the Award.

2. Hereinafter, for the sake of convenience, the parties will be



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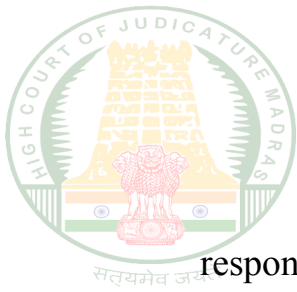
denoted as per their array in the Motor Accident Claims Original Petition.

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PETITIONER'S CASE IN BRIEF

3. On July 3, 2016, at about 07.00 a.m., the petitioner was riding his TVS Star City two-wheeler bearing Registration No.TN-47-AF-2272, near Aathikkapallam Petrol Bunk, on the leftmost side of Velayuthampalayam to TNPL Road, in north to south direction. At that time, the first respondent, who was riding his Hero Pleasure two-wheeler bearing Registration No.TN-47-AE-4730 ahead of the petitioner's vehicle in a rash and negligent manner at high speed, swerved right and collided with the petitioner's two-wheeler. Due to the sudden impact, the petitioner was thrown off his two-wheeler and sustained grievous injuries. The petitioner sustained injuries to his head, shoulder, and both knees. Immediately, the petitioner was given first aid at the Government Hospital, Velayuthampalayam, and then shifted to Amaravathy Hospital, Karur. Later, he was admitted to KMCH (Hospital), Coimbatore for further treatment. At the time of the accident, the petitioner was a 25 years old apprentice at Tamil Nadu Newsprint and Papers Limited (TNPL), Pugalur, Karur, earning a monthly salary of Rs.45,000/-. According to the petitioner, the first respondent, as the driver-cum-owner of the offending vehicle (Hero Pleasure two-wheeler bearing Registration No.TN-47-AE-4730), is

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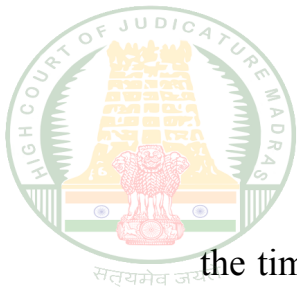
responsible for the accident. The second respondent is the insurer of the first respondent's vehicle. Therefore, both respondents are jointly and severally liable to pay compensation to the petitioner. Hence, the petitioner filed a claim petition before the Tribunal, seeking compensation of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs only).

FIRST RESPONDENT'S CASE

4. The first respondent, the owner of Hero Pleasure motorcycle bearing Registration No.TN-47-AE-4730, was called absent and set *ex-parte* by the Tribunal on July 3, 2017.

SECOND RESPONDENT'S CASE

5. The second respondent filed a counter before the Tribunal on February 6, 2018, denying the allegations made by the petitioner. The second respondent stated that the first respondent, being the driver-cum-owner of the Hero Pleasure motorcycle bearing Registration No.TN-47-AE-4730, did not inform the second respondent about the accident, as required by the terms and conditions of the insurance policy. It was also stated that neither the petitioner nor the first respondent possessed valid driving license, insurance certificate, or vehicle registration certificate at



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the time of the accident. Furthermore, the claim petition was contested on the grounds of non-joinder of necessary parties, as the insurer of the TVS Star City Plus bearing Registration No. TN-47-AF-2272 was not impleaded.

5.1. The second respondent filed another counter on February 27, 2018, denying the averments made in the petition. It contended that there is no clinical evidence to prove that the head injury allegedly sustained by the petitioner in the accident rendered him bedridden and unconscious.

5.2. The second respondent filed another counter on September 4, 2018, denying the allegation that the petitioner was unable to take care of himself and engage in his day-to-day activities. Further contended that, the enhanced claim made by the petitioner is baseless, and the petitioner is required to provide strict proof of the same.

5.3. The second respondent filed an additional counter stating that the petitioner had not provided any documents supporting his enhanced compensation claim of Rs.1,20,00,000/- and the other expenses

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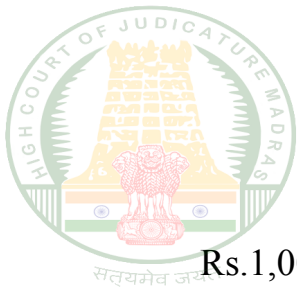
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claimed under various heads in the petition were denied. Accordingly, the second respondent/insurance company prayed for the dismissal of the original petition.

TRIBUNAL

6. Before the Tribunal, on the side of the petitioner, the father of the petitioner - Ravi was examined as P.W.1, Dr.Kesavamoorthy from KMCH (Hospital) was examined as P.W.2, and one Gopinath, a physiotherapist from Jiya Shree Physiotherapy Clinic was examined as P.W.3, and Ex-P.1 to Ex-P.58 were marked. Neither any witnesses was examined nor any document was marked on the side of the respondents.

7. Upon hearing both sides and considering the oral and documentary evidence, the Tribunal, relying on the evidence of P.W.1 and Ex-P.5 - Charge Sheet Docket, concluded that the accident occurred only due to the rash and negligent riding of the first respondent. The Tribunal further held that, at the time of the accident, the first respondent's motorcycle was insured with the second respondent, and therefore, the second respondent is legally liable to pay compensation to the petitioner. Accordingly, the Tribunal directed the second respondent to pay a sum of



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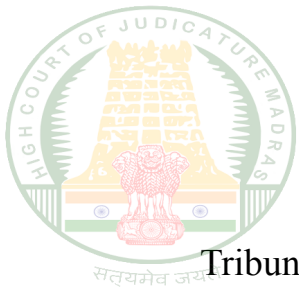
Rs.1,00,78,000/- (Rupees One Crore Seventy-Eight Lakhs only) to the petitioner, with interest at the rate of 7.5% per annum from the date of the petition until the date of realization. The split-up figure is as follows:

S.No.	Head	Amount Rs.
1	Loss of Earnings	Nil
2	Transport to Hospital	1,50,000.00
3	Extra Nourishment	3,00,000.00
4	Attender Charges	6,00,000.00
5	Future Medical Expenses	7,00,000.00
6	Damages for Clothes and Articles	10,000.00
7	Medical Expenses	20,18,000.00
8	Pain and Sufferings	12,00,000.00
9	Permanent Disability & Loss of Earning Power	51,00,000.00
Total		1,00,78,000.00

8. Aggrieved by the award, the second respondent - Insurance Company has filed this Civil Miscellaneous Appeal.

ARGUMENTS

9. Mr.S.Arunkumar, learned counsel appearing for the appellant / second respondent / insurance company argued that the petitioner had followed the vehicle ahead viz., first respondent's vehicle without maintaining a safe gap leading to the accident and hence, the Tribunal ought to have fixed negligence completely on the petitioner. The



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Tribunal failed to note that the petitioner invited the accident by not maintaining a safe distance. Further, the chances of recovery and the possibility of improvement in functional capacity cannot be simply ignored, and therefore, the Tribunal erred in awarding Rs.51,00,000/- as loss of earning power. The Tribunal also erred in awarding a huge sum of Rs.12,00,000/- towards pain and suffering without any basis.

9.1. He further argued that on the basis of medical bills (Ex-P.9 to Ex-P.34), the petitioner claimed a sum of Rs.20,17,152/- towards medicine charges, hospital charges, X-ray bills, *etc.* The learned counsel brought to the notice of this Court Ex-P.10 - Advance Receipt issued by KMCH (Hospital) and argued that the Tribunal had also included the advance amount of Rs.5,28,861/- while reckoning the compensation towards medical expenses. Since this results in double counting, the said amount should be deducted from the medical expenses. Therefore, the actual medical expenses incurred by the petitioner amount is Rs.14,88,291/-. In total, the Tribunal erred in awarding a huge compensation of Rs.1,00,78,000/- (Rupees One Crore Seventy-Eight Lakhs only) without any rational basis or evidence.



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9.2. Further, the learned counsel submitted that Insurance Company has filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 in CMP. No.7339 of 2022 and thereby seeks to receive the Insurance Company's Investigation Report dated December 4, 2019 in order to prove that the amount mentioned in Ex-P.10 is not to be included while calculating the compensation towards medical expenses. Further, TNPL, as employer of the petitioner's father, has paid a sum of Rs.64,410/- and the said amount cannot be claimed by the petitioner from the Insurance Company. The said investigation report would help in deciding these aspects and is therefore, necessary to decide the case. Accordingly, he prayed to allow the Civil Miscellaneous Petition and the Civil Miscellaneous Appeal.

10. *Per contra*, Mr.S.Kaithamalai Kumaran, the learned counsel for the first respondent/petitioner submitted that the Tribunal upon rightly appreciating the evidence available on record, passed the Award and there is no warrant to interfere with the same. At the same time, he conceded to the argument advanced by Mr. Arunkumar with regard to advance amount of Rs.5,28,861/- mentioned in Ex-P.10 and expressed no objection to deduct same from the medical expenses. As regards the Order

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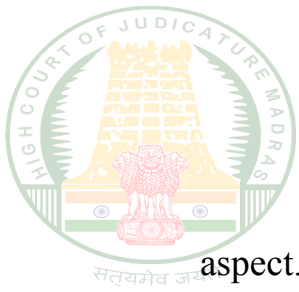
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XLI Rule 27 Application, he argued that the Insurance Company's Investigation Report has no legal backup. Moreover, the author of the report / investigator was not examined before the Tribunal and no reason was assigned in this regard. Further, no document has been annexed to support the Insurance Company's Investigation Report. Further, there are already sufficient materials available on record to decide the case. Hence, the additional documents sought to be received is not necessary. Accordingly, he prayed to dismiss both, the Civil Miscellaneous Appeal and the Civil Miscellaneous Petition.

DISCUSSION:

11. This Court has considered the submissions made on either side and perused the records.

12. As regards Order XLI Rule 27 Application, the Insurance Company has thereby sought to mark its investigation report citing that it would be helpful in determining a just compensation under the head of medical expenses. Since the petitioner admits and raises no objection to deduct the amount mentioned in Ex-P.10 – Advance Receipt, this Court is of the view that additional evidence is not required to decide the said



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aspect. Moreover, the Insurance Company could have examined the author of the report / investigator before the Tribunal itself. It failed to do so and no reason has been assigned by the Insurance Company for the same. To be noted, the investigation report is dated December 4, 2019 which means it has been prepared post the Award. Further, the report does not contain any supporting documents. Mere report *i.e.*, mere statement of a living person, cannot be received as additional evidence in the appellate court. Allowing the application would serve no fruitful purpose and it would cause delay in the proceedings. Hence, this Court is not inclined to allow the application. **Accordingly, Civil Miscellaneous Petition No.7339 of 2022 is dismissed.**

13. The second respondent / Insurance Company admits the factum of accident, however questions the alleged manner of accident by denying that the accident occurred due to the rash and negligence on the part of first respondent. Ex-P.3 – Motor Vehicle Inspection Report [M.V.I. Report] of the petitioner's motorcycle reveals that on the date of accident, the petitioner's vehicle had a valid fitness certificate and that the petitioner had a valid driving licence. His driving licence particulars are mentioned in it. Ex-P.4 – M.V.I. Report of the offending vehicle reveals that the

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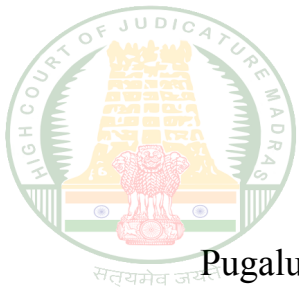
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offending vehicle had a valid fitness certificate and that it was duly insured with second respondent as on the date of accident *i.e.*, July 3, 2016. It further reveals that the first respondent too had a valid driving licence on the date of accident. The evidence of P.W.1 coupled with Ex-P.1 – First Information Report (FIR) and Ex-P.5 – Charge Sheet Docket *prima facie* supports the case of petitioner. The same have not been controverted by the second respondent. The second respondent has not taken any step to controvert the same. The second respondent has not examined the first respondent who is a competent person to depose about the manner of accident, nor has adduced any other oral or documentary evidence in this regard. In these circumstances, this Court has no hesitation to hold the first respondent negligent, and the second respondent being the offending vehicle's insurer, liable to pay compensation to the petitioner. The Tribunal has rightly appreciated the evidence and held the second respondent liable to pay compensation. There is no need to deviate from the same.

14. At the time of the accident, undisputedly, the petitioner was 25 years old. He had a Bachelor Degree in Automobile Engineering. Exs-P.55 and P.56 – Apprenticeship Completion Certificates would show that he had also completed one year Apprenticeship Training at TNPL,

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Pugalur, Karur on April 23, 2016, and that he was provided a sum of Rs.6,000/- per month as stipend during his apprenticeship. Furthermore, the petitioner had received an interview call letter dated December 2, 2014 (Ex-P.58) from the Tamil Nadu State Transport Corporation Limited, Kumbakonam, for the post of Assistant Engineer (Trainee). There is no clarity as to whether he landed the job or not. There is no evidence as to whether the petitioner participated in the interview or not in the first place. Considering the above evidence cumulatively as well as the cost of living that prevailed at the time of accident, this Court is of the view that the petitioner was a degree holder in Automobile Engineering having good job prospects and that he would have earned not less than Rs.20,000/- per month. The Tribunal has taken an exaggerated amount of Rs.25,000/- as notional income which is not right in the opinion of this Court.

15. As it could be seen from Ex-P.8 – Disability Certificate, the petitioner suffered from (i) *Spastic right hemiplegia* (ii) *Upper motor neuron paralysis of right Facial nerve* (iii) *Motor Aphasia (Inability to speak)* (iv) *Diplopia (Double Vision)* due to the accident. Ex-P.8 concludes that the petitioner suffered 100% permanent disability on account of the accident. In view of the injuries suffered by the petitioner in the accident,

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this Court is of the view that the petitioner suffered 100% functional disability. Hence, the Tribunal was right in employing multiplier method. However, the Tribunal failed to add future prospects. As per Judgement of Hon'ble Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi* reported in (2017) 16 SCC 680, 40% future prospects should be added in this case. Accordingly, compensation under the head of loss of earning power would come to Rs.60,48,000/- [(Rs.20,000/- + 40% Future Prospects) X 12 X 18]

16. Due to the accident, the petitioner was admitted in KMCH (Hospital) from July 3, 2016 to September 13, 2016, as evident from Ex-P.21 – Discharge Summary. Thereafter, he was admitted in Christian Medical College (CMC), Vellore for three days viz., February 7, 2017 to February 9, 2017, as evident from Ex-P.36 – Discharge Summary. Thereafter, he had been obtaining treatment as outpatient and undergoing physiotherapy, as deposed by P.W.3 - Physiotherapist. Considering the nature of injury, the period of treatment as well as the fact that he has been receiving treatment as outpatient thereafter, this Court is of the view that the compensation amounts awarded by the Tribunal under the heads of attender charges, transport charges and future medical expenses are

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reasonable and requires no interference. However, compensation under the heads of extra nourishment and pain & sufferings seem to be excessive and hence, are reduced to Rs.2,00,000/- and Rs.3,50,000/- respectively.

17. Further, the actual medical expenses incurred by the petitioner is only Rs.14,88,291/-. As fairly conceded by Mr.S.Kaithamalai Kumaran, amount of Rs.5,28,861/- mentioned in Ex-P.10 – Advance Receipt is to be deduced from the compensation awarded under the head of medical expenses viz., Rs.20,18,000/-. Therefore, this Court makes the deduction and reduces the same to Rs.14,88,291/-.

18. To sum up, this Court is inclined to modify the impugned award as tabulated below:

S.No.	Head	Quantum awarded by the Tribunal Rs.	Quantum now arrived by this Court Rs.	Status
1)	Transport to Hospital	1,50,000.00	1,50,000.00	Confirmed
2)	Extra Nourishment	3,00,000.00	2,00,000.00	Reduced
3)	Attender Charges	6,00,000.00	6,00,000.00	Confirmed
4)	Future Medical Expenses	7,00,000.00	7,00,000.00	Confirmed
5)	Damages for Clothes & Articles	10,000.00	10,000.00	Confirmed
6)	Medical Expenses	20,18,000.00	14,88,291.00	Reduced
7)	Pain and Sufferings	12,00,000.00	3,50,000.00	Reduced
8)	Permanent Disability &	51,00,000.00	60,48,000.00	Enhanced



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<i>S.No.</i>	<i>Head</i>	<i>Quantum awarded by the Tribunal Rs.</i>	<i>Quantum now arrived by this Court Rs.</i>	<i>Status</i>
	Loss of Earning Power			
	Total	1,00,78,000.00	95,46,291.00	Reduced

19. Accordingly, the appellant/insurance company shall deposit the aforementioned Award amount of **Rs.95,46,291/-**, along with costs incurred before the Tribunal and 7.5 % interest on Rs.88,46,291/- (no interest for compensation towards future medical expenses) from the date of claim petition till the date of such deposit, less the amount if any already deposited, to the credit of MCOP No.381 of 2017 on the file of Tribunal, within 45 days from the date of receipt of copy of this Judgment.

19.1. Out of the aforementioned Award amount, Rs.30,00,000/- (Rupees Thirty Lakhs only) shall be deposited in a nationalized bank. The petitioner himself or the father / guardian of the petitioner shall be permitted to withdraw the interest accruing thereon once in three months. The Tribunal shall ensure that the same is spent only for the welfare of the petitioner.



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19.2. The Tribunal shall deposit the remaining Rs.65,46,291/-

(Rupees Sixty Five Lakhs Forty Six Thousand Two Hundred and Ninety One only) along with all the accrued interest in the Joint Bank Account of the petitioner and his father – Ravi, having Account No.095901000016561, being maintained at Indian Overseas Bank Kandhampalayam Branch, Karur. The petitioner himself or the father / guardian of the petitioner shall be permitted to withdraw the same along with all the accrued interest.

19.3. If there is any medical emergency requiring heavy funds, amount shall be released as required from the said Rs.30,00,000/- subject to the satisfaction of the Tribunal.

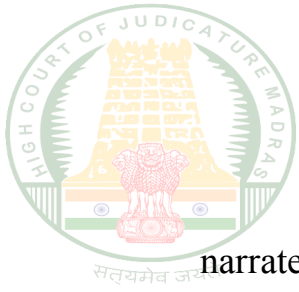
19.4. In case the appellant/insurance company has deposited any excess amount, it is permitted to withdraw the same along with the interest accrued thereon by filing suitable application before the Tribunal.

19.5. In all other aspects, the Award of the Tribunal holds good.

CONCLUSION

20. Resultantly, CMP No.7339 of 2022 is dismissed as

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narrated above. The Civil Miscellaneous Appeal is allowed in part and the impugned Award is modified as detailed above. Consequently, connected CMP No.7337 of 2022 is closed. In view of the facts and circumstances of this case, there shall be no order as to costs in the Civil Miscellaneous Appeal.

[J.N.B., J.]

[R.S.V., J.]

29 / 04 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No

TK

To

1.The Motor Accidents Claims Tribunal
Special Subordinate Judge
Erode.

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



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CMA NO.989 OF 2022

J.NISHA BANU, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CMA NO.989 OF 2022

29 / 04 / 2025

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