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C.M.A.No.1128 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1128 of 2021

The Divisional Manager,
M/s.Cholamandalam MS General
Insurance Company Limited,
'Dare House', II Floor,
No.2, N.S.C. Bose Road,
Chennai – 600 001.

..Appellant

Vs.

1. Muthu

2. Murali

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 14th February, 2020 passed in M.C.O.P.No.104 of 2018, Motor Accidents Claims Tribunal (Special Subordinate Court), at Tirupattur.

For Appellant : Mr.J.MichaelVisuvasam

For Respondents : Mr.M.Arun for M/s.Karan&Uday for R1

JUDGEMENT

Challenging the judgment and decree dated 14.02.2020 made in M.C.O.P.No.104 of 2018 on the file of the Motor Accidents Claims Tribunal



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(Special Subordinate Court), at Tirupattur, the appellant / Insurance company is before this Court.

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

3. It is the case of the appellant/Insurance company that, on 18.01.2018 at about 9.00 a.m, when the first respondent / claimant was riding a motor cycle bearing Regn.No.TN 83 V 0303, at that time an Auto bearing Regn.No.TN 83 W 2129 driven by the second respondent / owner came in a rash and negligent manner and dashed the vehicle driven by the claimant, due to which the claimant sustained grievous. Thereby, the first respondent / claimant has filed a claim petition seeking compensation of Rs.10,00,000/-.

4. Before the tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1 to P.16 and on the side of respondents R.W.1 and R.W.2 were examined and no exhibits were marked. After trial, the Tribunal, on appreciation of oral and documentary evidence awarded a sum of Rs.2,53,048/- as compensation. Challenging the same, the appellant/Insurance company has come up with this appeal.



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5. The learned counsel appearing for the appellant / Insurance company submitted that admittedly, due to the rash and negligent driving of the driver of the two wheeler / claimant, the said accident happened and the FIR was also registered as against the claimant. However, without considering the above said facts, the Tribunal awarded a sum of Rs.2,53,048/- which is highly excessive and the same requires interference.

6. Per contra, the learned counsel appearing for the first respondent/ claimant submitted that, though the claimant had examined himself as P.W.1 in order to prove the accident, however, in order to disprove the same, the appellant / insurance company has not marked any independent eye witness on their behalf. In the absence of any independent eye witness and merely on the basis of the registration of FIR and charge sheet, it cannot be said that due to the rash and negligent driving of the claimant, the said accident happened. However, by considering all the relevant documents, the Tribunal has rightly awarded the compensation on the ground that the said accident happened solely due to the rash and negligent driving of the driver of the Auto, which does not require any interference. Accordingly, he prayed for dismissal of the appeal.



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7. Heard the learned counsel on either side and perused the materials

available on record.

8. The factum and manner of the accident is not disputed by the parties and the claimant has not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same. The major grievances of the Appellant/Insurance company is with regard to the quantum of compensation awarded by the Tribunal. On a perusal of Ex.P.16, which is the disability certificate issued by the Medical Board, reveals that the appellant has not suffered any disability. In the absence of any disability sustained by the claimant, the Tribunal has awarded a sum of Rs.5,000/-, Rs.2,000/-, Rs.10,000/-, Rs.10,000/- and Rs.18,000/- under the heads Extra nourishment, Attender charges, Transportation expenses, loss of amenities and Loss of income which is per se unsustainable. Hence, the award of compensation awarded under the said heads are dis-allowed.

9. A sum of Rs.30,000/- has been granted under the head “pain and suffering” which is on the lower side and the same is enhanced to a sum of Rs.40,000/-. Insofar as the compensation awarded under the head Medical expense is concerned, the same is just and reasonable and the same does not



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require any interference.

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

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Pain and suffering	30,000/-	40,000/-
Extra nourishment	5,000 /-	-
Attender charges	2,000/-	-
Medical expenses	1,78,048/-	1,78,048/-
Transportation expenses	10,000/-	-
Loss of amenities	10,000/-	-
Loss of Income	18,000/-	-
Total	2,53,048/-	2,18,048/-

11. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified by deducting the compensation amount from Rs.2,53,048/- to **Rs.2,18,048/-**. The appellant/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.104 of 2018 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



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to transfer the said amount directly to the bank account of the first respondent /

claimant through RTGS within a period of two (2) weeks thereafter. There shall

be no order as to costs in the present appeal.

29.01.2025

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes / No

To

1. Motor Accidents Claims Tribunal (Special Subordinate Court), at Tirupattur.

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



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M.DHANDAPANI, J.

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