



C.M.A.No.2645 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2645 of 2024

and

C.M.P.No.21107 of 2024

and

C.M.A.No.3133 of 2024

C.M.A.No.2645 of 2024

Cholamandalam MS General Ins.Co.Ltd.,
2nd Floor, shawallace Building,
No.154, Tambu Chetty Street,
Parry's Corner,
Chennai - 600 001.

..Appellant

Vs.

1. Balaiyan,
S/o Munusamy

2. Kannan
S/o Natchu

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 24.01.2024 made in MCOP.No.3281 of 2017 on the file of the Motor



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Accident Claims Tribunal, Special Sub Court, Cuddalore.

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For Appellant : Ms.R.Sree Vidhya

For Respondent : Mrs.Ramya V.Rao
for R1
No appearance for R2

C.M.A.No.3133 of 2024

Balaiyan,
S/o Munusamy.

..Appellant

Vs.

1. Kannan
S/o Natchu,
No.301, South Street, Old Colony,
Koovagam, Ulunthurpet Taluk.

2. Cholamandalam MS General Ins.Co.Ltd.,
2nd Floor, shawallace Building,
No.154, Tambu Chetty Street,
Parry's Corner,
Chennai - 600 001

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 24.01.2024 made in MCOP.No.3281 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Cuddalore.

For Appellant : Mrs.Ramya V.Rao



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For Respondents : No appearance for R1
Ms.R.Sree Vidhya
for R2

COMMON JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J.)

C.M.A.No.2645 of 2024 has been filed by the appellant/Insurance Company challenging the the judgment and decree dated 24.01.2024 made in M.C.O.P.No.3281 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub-Court, Cuddalore, by which, the appellant/Insurance Company was directed to pay a sum of Rs.44,01,632/- as compensation to the 1st respondent/ injured claimant. C.M.A.No.3133 of 2024 has been filed by the injured claimant for enhancement of compensation.

2. The case in brief in the claim petition is that on 03.03.2017 at about 19.30 hours, when the claimant was travelling in an auto rickshaw bearing Regn.No.TN-15-9526, the said auto was driven in a rash and negligent manner and dashed against another auto bearing Reg.No.TN-32-H-0609 which came in the opposite direction. Due to the impact, the claimant sustained grievous injuries. He was taken to Government



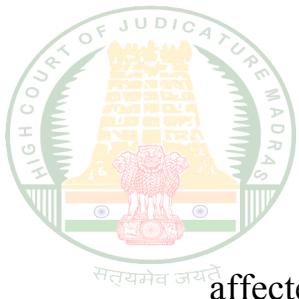
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Hospital, Mundiampakkam and then taken to MIOT Hospital, Chennai and treated as inpatient from 04.03.2017 to 06.03.2017 and surgery was done on 04.03.2017 and then, he was taken to Government General Hospital, Chennai and treated as an inpatient from 07.03.2017 to 08.05.2017 and surgery was done on 22.03.2017. Thereafter, he took further treatment in private hospitals. According to the claimant, the said accident occurred only due to rash and negligent driving of the driver of the auto rickshaw bearing Reg.No.TN-15-9526. According to the claimant, the 1st and 2nd respondents/ owner and insurer of the said Auto Rickshaw bearing Regn.No.TN-15-9526 are jointly and several liable to pay the compensation to the claimant. The claimant had claimed a sum of Rs.50,00,000/- as compensation.

3. The appellant Insurance Company has challenged the quantum of compensation awarded by the Tribunal. The injured claimant has sought for enhancement of compensation.

4. Learned counsel for the appellant Insurance Company would state that there is no evidence in respect of earning capacity being



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affected on a permanent basis and therefore, adopting the multiplier method and granting such a huge sum of Rs.36,28,800/- under the head of loss of earning capacity is not proper. He would further state that the Tribunal erred in awarding a sum of Rs.97,200/- towards Transport expenses without proper bills. The amount of Rs.1,20,000/- awarded for pain and sufferings, Rs.1,00,000/- towards loss of amenities and the amount awarded under the other heads are not in consonance with the facts and evidence. Hence, he would pray that the award passed by the Tribunal is liable to be set aside.

5. Learned counsel for the injured claimant would state that the injured is 32 years old and he is a M.Sc., M.Phil., graduate. He was employed in a private company and was earning a sum of Rs.25,000/- per month. The injured sustained '*compound grade 3B, severely comminuted both bone fracture in right leg, segmental shaft of femur fracture in right leg, chest injury- bilateral posterior basal dependent atelectasis*'. He was treated as an inpatient for nearly 7 times and 8 surgeries were done. The medical board assessed his disability at 75%. The learned Tribunal ought to have converted it into 100% for loss of



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earning. Further, the Tribunal has granted only Rs.35,000/- as attender charges which is very low. He would further state that the Tribunal ought to have fixed better notional monthly income. Hence, he would pray to enhance the compensation awarded by the Tribunal.

6. Heard the learned counsel for the Insurance Company, the learned counsel for the claimant and perused the materials available on record.

7. The Tribunal, under the impugned award, directed the Insurance Company to pay the claimant, a compensation of Rs.44,01,632/-(Rupees Forty Four lakhs One thousand Six Hundred and Thirty Two only) as detailed hereunder:

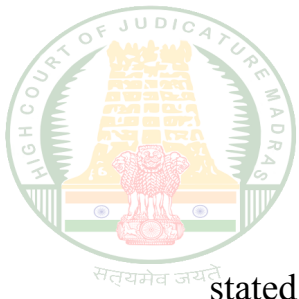
<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Loss of Income	36,28,800
Pain and Sufferings, mental agony	1,20,000
Medical expenses	3,70,632
Extra Nourishment	20,000
Attender Charges	35,000



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Transportation charges	97,200
Loss of Amenities	1,00,000
Loss of Marital life	30,000
Total	44,01,632

8. Ex.P1 First Information Report, the earliest document, immediately after the accident, shows that it was the driver of the auto bearing registration No.TN-15-9526, who drove the vehicle in a rash and negligent manner and dashed against another auto bearing Reg.No.TN-32-H-0609 which came in the opposite direction and caused the accident. Due to the said accident, the claimant sustained grievous injuries. Ex.P1-FIR as well as the evidence of P.W.1 clearly prove the negligence on the part of the driver of the auto bearing registration No.TN-15-9526. Therefore, we are of the considered view that the accident had occurred only due to the negligence on the part of the driver of the auto bearing registration No.TN-15-9526.

9. It is further seen that the injured had been assessed with 75% disability. The accident had occurred in the year 2017. Though it was



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stated that the injured was working in a private company and was earning a sum of Rs.25,000/- per month, no document was produced to prove the same. Therefore, we are of the opinion that it would be fair and reasonable if a sum of Rs.16,500/- per month is fixed as his salary, instead of Rs.18,000/- fixed by the Tribunal. Considering the age of the injured, the Tribunal has rightly fixed 40% towards future prospects following the decision of the Hon'ble Supreme Court in ***National Insurance Company Ltd., Vs. Pranay Sethi*** reported in (2018) 1 LW 331. Therefore, we fix the total loss of income as Rs.33,26,400/- (i.e., $23,100 \times 12 \times 16 \times 75/100$).

10. Insofar as the amount awarded for transportation charge is concerned, the Tribunal has fixed Rs.97,200/-, based on Ex.P12 & Ex.P24- Trip sheets and Ex.P11- ambulance bill, i.e., a sum of Rs.57,000/-, Rs.29,600/- and Rs.10,600/- respectively. We are of the opinion that it would be fair and proper if the same is enhanced to Rs.1,00,000/- instead of Rs.97,200/- as awarded by the Tribunal. Accordingly, we fix a sum of Rs.1,00,000/- towards transportation charges.



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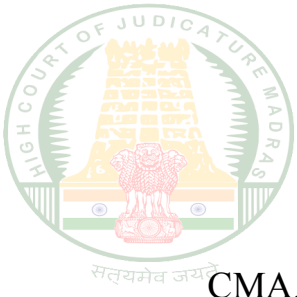
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11. Insofar as the amount awarded under the other heads are concerned, we are of the opinion that the same is reasonable and need not be interfered with.

12. In the light of the above, the compensation awarded by the Tribunal is hereby modified as under:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	36,28,800	33,26,400	Reduced
2.	Pain and suffering	1,20,000	1,20,000	Confirmed
3.	Medical Bills	3,70,632	3,70,632	Confirmed
4.	Extra Nourishment	20,000	20,000	Confirmed
5.	Attender Charges	35,000	35,000	Confirmed
6.	Transportation charges	97,200	1,00,000	Enhanced
7.	Loss of Amenities	1,00,000	1,00,000	Confirmed
8.	Loss of Marital Life	30,000	30,000	Confirmed
	Total	Rs.44,01,632/-	Rs.41,02,032/-	Reduced by Rs.2,99,600-

13. In the result, the CMA.No.2645/2024 is partly allowed and



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CMA.No.3133/2024 is dismissed. The compensation awarded by the Tribunal i.e., Rs.44,01,632/- is hereby reduced to Rs.41,02,032/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The other conditions imposed by the Tribunal below with respect to the manner, in which, the compensation has to be paid, are sustained as such.

14. It is submitted that the appellant Insurance Company has already deposited the entire amount, as per the award passed by the Tribunal. Hence, the Tribunal is directed to permit withdrawal of the amount, as per the modified award passed by this Court together with proportionate interest and costs, within a period of two weeks from the date of receipt of a copy of this order. The balance amount, shall be refunded to the appellant insurance company. No costs. The connected miscellaneous petition is closed.

(J.N.B, J.) (R.S.V., J.)
21.01.2025

Index: Yes/No
Speaking/Non-speaking order
vsi



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- 1.The Motor Accident Claims Tribunal,
Special Sub Court,
Cuddalore.
2. The Section Officer,
Vernacular Records, High Court,
Madras.



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J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

vsi

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