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C.M.A. No. 2957 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.2957 of 2023

and

C.M.P.No.27843 of 2023

The Branch Manager,
ICICI LOMBARD General Insurance
Company Limited,
414, Veer Savarkar Marg,
Near Siddhi Vinayak Temple,
Prabhadevi,
Mumbai - 400 025.

...Appellant(s)

Vs

M. Sathishbabu

...Respondent(s)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 24.02.2020 passed in M.C.O.P.No.764 of 2018 on the file of the learned Special Subordinate Judge, Motor Accidents Claims Tribunal, Krishnagiri.

For Appellant(s): Mr.K.Poomalai



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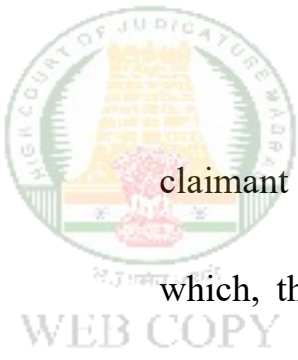


For Respondent(s): Mr.S.Ramprabhu
for Mr.S.P.Yuaraj

ORDER

The present Civil Miscellaneous Appeal is filed by the respondent/Insurance Company as appellant herein, challenging the Award and Decree dated 24.02.2020 passed by the learned Special Subordinate Judge (Motor Accident Claims Tribunal), Krishnagiri, in M.C.O.P.No.764 of 2018, whereby a total compensation of Rs.2,96,590/- with interest @ 7.5% per annum was awarded in favour of the claimant.

2.The case of the respondent/claimant before the Tribunal was that, on 31.10.2017 about 09.30 a.m., while he was riding his two-wheeler bearing Registration No. TN-24-AJ-4345 belonging to the claimant and insured with the respondent, near Kaveripattinam Thenpennai river over bridge, unfortunately, a dog came from the Western side and ran towards Eastern side. At that time, the



claimant was not able to control the moped and applied sudden brake. Due to which, the moped capsized in the Road and the claimant sustained grievous injuries. The above accident had occurred only due to avoid hitting against the dog. The accident was registered in Crime No.886 of 2017 under Sections 279 and 337 of the Indian Penal Code by the Kaveripattinam Police. The claimant stated that he was doing Real Estate business and earning Rs.40,000/- per month. The Doctor assessed the permanent partial disability of 35%, and he was unable to continue his work as before. Therefore, he claimed a sum of Rs.8,00,000/- towards compensation.

3.The appellant/Insurance Company filed a detailed Counter Statement, contending that the accident occurred only due to the negligence of the claimant, who was driving carelessly. An FIR has been registered against the claimant. It was also contended that the Tribunal erred in fixing the liability on the insurer and that the compensation awarded was excessive and without any documentary proof.

4.The Tribunal, upon considering the oral and documentary evidence,



came to a conclusion that the accident occurred solely due to the rash and negligent driving of the claimant and awarded a sum of Rs.2,96,590/- towards compensation. Aggrieved over the same, the Insurance Company is before this Court.

5.The learned counsel for the appellant/Insurance Company contended that that Tribunal failed to appreciate the documentary evidence of Ex.P.1 to Ex.P.3 which the claimant is a tortfeasor and himself, drove his own motor cycle which was dashed against another motor cycle and the another motor cyclist died. Further, FIR was filed against the claimant-cum-owner of the vehicle bearing No.TN 24P 0934 who's fault at the time of the accident. Further, the respondent failed to note that the claimant is not a third party as per the indemnity contract of the Insurance policy executed between the appellant and the respondent/claimant whose claim is not maintainable under Section 163(A) of the Motor Vehicles Act. He would submit that under the IRDA terms of the policy covered for the personal accident, a sum of Rs.1,00,000/- is only eligible subject to the bodily injury, if it is 100% permanent disability or death claim to



the legal heirs of the owner of the vehicle based on its premium paid for Rs.50/- towards the personal accident cover which was not a third party premium to invoke by the tribunal, hence, the Award passed by the Tribunal is set aside. He would also submit that the Disability Certificate was not issued by a Government Medical Board and hence should not have been relied upon. The quantum of compensation awarded by the Tribunal is disproportionate to the nature of injuries proved. Hence, the appellant prayed that the award be reduced or set aside. The learned counsel appearing for the appellant relied upon the decisions of this Court in **Tata AIG General Insurance Co. Ltd., 4&5-AA, Towers, North Block, III Floor, Near Aparna Towers, Madurai v. Shanmugam** reported in **2024 (2) TN MAC 305 (DB)** and in the case of **M/s.The Cholamandalam MS General Insurance Company Limited, Dare House, Chennai v. Ramesh Babu** dated 02.09.2020 in support of their contentions.

6.The learned counsel for the respondent/claimant would submit that this is a very reasonable award and does not warrant a reconsideration. He would



submit that the 35% disability was supported by medical evidence, and the compensation awarded was just and reasonable. Hence, he prayed for the dismissal of the appeal. In support of their contentions, the learned counsel appearing for the respondent relied upon the decision of this Court in **National Insurance Co. Ltd. v. Ashalata Bhowmik & others** reported in **CDJ 2018 SC 897**.

7. Heard the learned counsel appearing on either side and perused the papers.

8. On a perusal of the records, it is seen that the claimant while riding his own moped, a dog came from the Western side and ran towards Eastern side and due to sudden brake, the moped capsized in the Road and the claimant sustained grievous injuries. The accident was registered in Crime No.886 of 2017 under Sections 279 and 337 of the Indian Penal Code by the Kaveripattinam Police. The Doctor assessed the permanent partial disability of 35%. Further, the claimant is not a third party as per the indemnity contract of the Insurance policy executed between the appellant and the respondent/claimant whose claim



is not maintainable under Section 163(A) of the Motor Vehicles Act. Under the

IRDA terms of the policy covered for the personal accident, a sum of Rs.1,00,000/- is only eligible subject to the bodily injury, if it is 100% permanent disability or death claim to the legal heirs of the owner of the vehicle based on its premium paid for Rs.50/- towards the personal accident cover which was not a third party premium to invoke by the Tribunal. The Disability Certificate was not issued by a Government Medical Board. This Court in **S.Feroskhan vs. The Manager, Royal Sundaram Alliance Insurance Company Ltd., D.No.37, T.V.S., Co-operative Stores Building, Krishna Rao Tank Street, Madurai 625 001**, reported in **CDJ 2024 MHC 2547**, held that the claimant has suffered 25% of partial permanent disablement and the liability under P.A. Coverage is for Rs.2,00,000/-. Considering the scale of compensation, this Court is of the view that 1% of the amount can be awarded for every percentage of disability and as such, the claimant is entitled to get Rs.25,000/- towards disability suffered by him. In view of the settled position above referred, the claimant is not entitled to get any amount towards pain and sufferings, medical expenses already incurred and future medical expenses. The



above decision is squarely applicable to the case on hand.

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9. In the result, this Civil Miscellaneous Appeal is allowed and the claimant is entitled to compensation of Rs.35,000/- with interest at 7.5% per annum from the date of petition till the date of realization. The respondent/insurer is directed to deposit the amount with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this Judgment and on such deposit, the claimant is permitted to withdraw the same on due application before the Tribunal. Consequently, connected Miscellaneous Petition is closed. No costs.

17-07-2025

mps

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

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T.V.THAMILSELVI, J.

mps

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