



C.M.A.No.3182 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**C.M.A.No.3182 of 2021
and
C.M.P.No.18041 of 2021**

HDFC ERGO General Insurance Company Limited,
No.559, Anna Salai,
2nd Floor,
Chennai.

... Appellant

-Vs-

1. G.Kalaiarasan

2. M/s.Kundanmal Mukanmal Traders Pvt. Ltd.,
No.D-80, Chandpole Anaj,
Mandi Jaipur,
Rajasthan - 602 004.

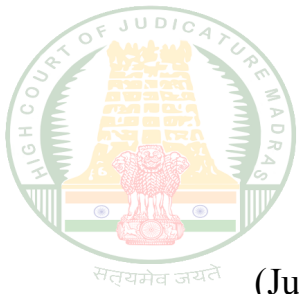
... Respondents

PRAYER : Appeal under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree in M.C.O.P.No.949 of 2016 dated 14.08.2020 on the file of the Motor Accidents Claims Tribunal (Small Causes Court-II), Chennai.

For Appellant : Mr.S.Arunkumar

For Respondents : Mr.K.Balaji for R1
No appearance for R2

J U D G M E N T



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(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

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This civil miscellaneous appeal has arisen out of the award passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai dated 14.08.2020 made in M.C.O.P.No.949 of 2016.

2. It is an injury case arising out of the motor accident which took place on 14.01.2016 at GST Road at Chennai at Urapakkam near Karanaiputhuchery Junction. The injured claimant was riding a two wheeler motorcycle with Registration No.TN-19-Q-8589. When it was slowing down to take a right turn towards Karanaiputhuchery Junction, the lorry bearing Registration No.TN-RJ-14-GC-3741 belongs to the second respondent was moving from Chengalpattu to Tambaram, i.e., behind the motorcycle in a rash and negligent manner hit the two wheeler ridden by the injured. Resultantly, the injured sustained major injuries and after taking him to hospital, after long treatment, his disability has been fixed at 70%.

3. In order to claim compensation, the injured claimant filed the said MCOP where after having taken into account the evidence adduced before it, the trial Court has awarded a total sum of Rs.52,34,800/-. Challenging the said award only, the present appeal has been directed at the instance of the appellant



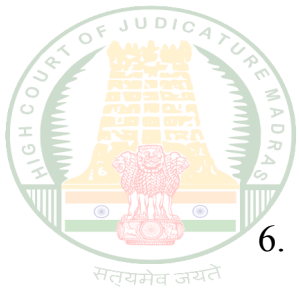
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/ Insurance Company.

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4. Heard Mr.S.Arunkumar, learned counsel appearing for the appellant / Insurance Company and Mr.K.Balaji, learned counsel appearing for the first respondent / claimant.

5. It was the contention of the learned counsel appearing for the appellant / Insurance Company that, if at all there has been a negligence, that should have been fastened both on the lorry driver as well as the rider of the two wheeler, i.e., injured as he has suddenly took right turn without giving any signal to take a right turn towards Karanaiputhuchery Junction Road, the lorry which was coming in a normal speed behind the two wheeler, though the lorry driver had applied the brake, it hit the motorcycle and therefore, the negligence cannot be attributable only on the driver of the lorry, but also the rider of the two wheeler. Therefore, it is the case of the contributory negligence, that was the first point canvassed by the learned counsel appearing for the appellant / Insurance Company.



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6. On the side of the quantum, the learned counsel appearing for the appellant / Insurance Company has disputed the monthly income fixed by the Tribunal at Rs.20,000/- based on the communication four days prior to the date of accident ie., 10.01.2016 received from the private company where the injured claimant has been working.

7. The learned counsel for the appellant would also submit that at the time of filing claim petition, the claimant claimed only Rs.15,000/- as monthly salary, whereas subsequently he filed the document, based on which, the Tribunal has also taken Rs.20,000/- as monthly salary of the injured and accordingly, he has calculated the total compensation at Rs.42,84,000/- under the head 'functional disability' which is on the higher side and not based on the actual earnings of the injured. Therefore, on the quantum itself, the interference is called for, he contended.

8. We have heard Mr.K.Balaji, learned counsel appearing for the first respondent / claimant who would submit that, based on the salary certificate, such an amount has been arrived at and insofar as the negligence part is concerned, absolutely it is the negligence on the part of the lorry driver which has been proved by virtue of Ex.P1 which is FIR and also the deposition of



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P.W.1 who is the injured. Therefore, on the basis of the evidence only, the Tribunal has come to such an arrival of fixing the quantum of compensation as well as the responsibility and therefore, it is not the case of contributory negligence and also the quantum is justifiable one and hence, the learned counsel seeks indulgence of this Court for dismissal of the present appeal.

9. We have considered the rival submissions made by the learned counsel appearing for both sides and gone through the order impugned.

10. Insofar as the claim made by the learned counsel appearing for the appellant / Insurance Company towards the contributory negligence is concerned, we are not impressed with the same, the reason being that, in the FIR, i.e., Ex.P1 it is made it very clear that, the lorry driver drove the lorry in rash and negligent manner and hit the two wheeler ridden by the injured. Moreover, both the vehicles since have been passing through the same direction, i.e., Chengalpattu to Tambaram, the lorry which was passing behind the two wheeler must have noticed the two wheeler which wanted to take a right turn and therefore, if the lorry hit the two wheeler on its back, it is a clear negligence on the part of the lorry driver and therefore, 100% negligence have to be fastened only on the lorry driver, it is not the case of contributory negligence.



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11. Insofar as the quantum is concerned letter dated 10.01.2016 has been marked as Ex.P14-salary certificate before the Tribunal, where it is stated that approximately the injured would have been receiving the salary and emoluments to the extent of Rs.20,000/-, that since has been stated only approximately, the Tribunal ought not to have taken the entire amount of Rs.20,000/- as the salary of the injured. Moreover, it was the claim of the injured before the Tribunal at the time of filing the claim petition that his salary was only Rs.15,000/- per month. When that being so, we do not find any reason to accept the claim of Rs.20,000/- as monthly salary of the deceased and based on which, the calculation made by the Tribunal slightly be erroneous and therefore, to that extent, we want to modify the same, resultantly, the following orders are passed:

- (a) The monthly salary of the injured fixed by the Tribunal at Rs.20,000/- per month is modified to Rs.15,000/-. Future prospects is taken at 40%. Accordingly, $\text{Rs.15,000} + 40\% \text{ of Rs.15,000} = \text{Rs.6,000/-}$ to be added, altogether Rs.21,000/- is fixed as monthly salary, and the multiplier is taken as '17'. If the functional disability is taken at 70%, the total sum of Rs.29,98,800/- would come under the head 'functional disability'.



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(b) The amounts awarded by the Tribunal under the following heads namely, 'pain and sufferings', 'damages to the clothes', 'attender charges', 'medical expenses', 'future medical expenses', 'loss of marriage prospects' and 'loss of amenities', are confirmed.

(c) The amount of Rs.1,00,000/- each awarded by the Tribunal towards 'transportation to hospital' and 'extra nourishment' is hereby reduced to Rs.50,000/- each,

(d) Insofar as the amount of Rs.1,20,000/- towards 'loss of income' is concerned, since it cannot be permitted in view of the method adopted by the Tribunal, hence it cannot be granted.

12. Accordingly, as per the present modification, the quantum of compensation would be fixed as follows:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>



1	Functional Disability	42,84,000/-	29,98,800/-
2	Pain and Sufferings	2,00,000/-	2,00,000/-
3	Extra Nourishment	1,00,000/-	50,000/-
4	Transport to Hospital	1,00,000/-	50,000/-
5	Damages to Clothes	1,000/-	1,000/-
6.	Attender Charges	9,800/-	9,800/-
7.	Medical Expenses	1,20,000/-	1,20,000/-
8.	Future Medical Expenses	1,00,000/-	1,00,000/-
9.	Loss of Income	1,20,000/-	-
10.	Loss of Marriage Prospects	1,00,000/-	1,00,000/-
11.	Loss of Amenities	1,00,000/-	1,00,000/-
	Total	52,34,800/-	37,29,600/-

13. With these modifications, the Civil Miscellaneous Appeal is allowed in part and the compensation awarded by the Tribunal at Rs.52,34,800/- is hereby reduced to Rs.37,29,600/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. It is stated that only 50% of the award amount was deposited by the appellant / Insurance Company, therefore the remaining amount by taking into account of the present modified award amount shall be deposited by the appellant / Insurance Company within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, since 50% of the amount deposited already has been withdrawn by the first respondent / claimant, the remaining



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amount to be deposited can also be withdrawn by the first respondent / claimant

without any further reference to this Court. However, there shall be no order as

to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.)

(A.D.M.C., J.)

06.03.2025

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal
(Small Causes Court-II),
Chennai.

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



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