



C.M.A.No.2624 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.01.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.2624 of 2024

and C.M.P.No.20862 of 2024

The Branch Manager,
M/s.Cholamandalam MS General
Insurance Company Limited,
Valli Vilas Hospital Campus Inside,
Bharathi Road, Cuddalore-607 001.

... Appellant/2nd Respondent

-VS-

1. N.Devaraj

... 1st Respondent/Claimant

2. R.Thirumurugan

... 2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the order of Award dated 18.12.2023 passed in M.C.O.P.No.662 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Judge I, Cuddalore.

For Appellant : Mr.S.Srinivasan

For R1 : Mrs.Ramya V.Rao



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ORDER
(By J.Nisha Banu,J.)

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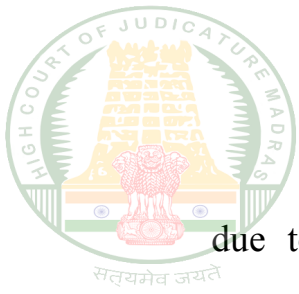
Feeling aggrieved by the Award dated December 18, 2023 passed in M.C.O.P.No.662 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Judge I, Cuddalore (in short 'Tribunal'), the appellant / Insurance Company preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to as per their array in the Tribunal.

Brief facts put forth by the petitioner/claimant

3. On March 4, 2022 at about 03.00 a.m., while the petitioner was riding his bike bearing Regn.No.PY-01-AW-9446 on Chennai-Trichy National Highways near Vikkiravandi Tollgate, a Goods carrier vehicle bearing Regn.No.TN-63-BL-7583, owned by the 1st respondent and insured with the 2nd respondent insurance company, was parked along the road in a “No Parking” Area without any sign board. Though the petitioner/claimant noticed the Goods Carrier vehicle in the darkness and suddenly applied brake, his bike skidded and collided with the vehicle of the 1st respondent,

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due to which, the petitioner sustained grievous injuries. The accident occurred only due to the careless parking of the 1st respondent. At the time of accident, the petitioner/claimant was 28 years old and he was running a Helmet Shop and earning a sum of Rs.40,000/- per month. According to the petitioner/claimant, the accident occurred only due to the wrongful parking of the driver of the 1st respondent's vehicle without proper indication and since the first respondent's vehicle has been insured with the second respondent – Insurance Company, both the respondents are liable to pay compensation to the petitioner. Accordingly, the petitioner filed the Claim Petition before the Tribunal, seeking compensation of Rs.75,00,000/- (Rupees Seventy Five Lakhs only) along with interest and costs.

The case of the 2nd Respondent in the counter

4. The 2nd respondent denied the validity of the driving licence possessed by the 1st respondent and the accident occurred due to the careless driving of the petitioner/claimant, who was under the influence of alcohol at the time of accident. The petitioner/claimant had driven the two wheeler bearing Regn.No.PY-01-AW-9446 in a rash and negligent manner and invited the accident. Thus, he was solely responsible for the accident. The



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petitioner/claimant has to prove the validity of the insurance policy and the driving licence of the driver of the 1st respondent. The 2nd respondent denied the age, occupation and income of the petitioner. Stating that the amount of compensation claimed is unsustainable, the 2nd respondent prayed to dismiss the claim petition.

5. Before the Tribunal, petitioner examined himself as P.W.1 and Ex.P1 to Ex.P12 were marked on the side of the petitioner. On the side of the 2nd respondent, neither witness was examined nor document marked. One Court exhibit was marked as Ex.C1 with consent of both side.

6. The Tribunal, after considering the evidence available on record, held that the 1st respondent is responsible for the accident. Accordingly, the Tribunal held that the 2nd respondent / Insurance Company, being insurer of the 1st respondent's motorcycle, is liable to pay the compensation to the petitioner/claimant. Though a plea of drunken drive was taken before the Tribunal, there was no evidence adduced to prove that the petitioner/claimant exceeded the permitted quantity and hence, the said plea was rightly rejected by the Tribunal.



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7. With regard to quantum of compensation, though the

claimant / petitioner stated that he was running a Helmet Shop, no document had been filed to prove the income and hence, notional income had been taken into consideration. The percentage of disability was assessed at 58. The Tribunal, upon considering the age of the petitioner/claimant, had taken notionally a sum of Rs.20,000/- as his monthly salary, applied multiplier of 17 as per the judgment of the Hon'ble Supreme Court in **Sarla Verma and Others vs. Delhi Transport Corporation and another**, reported in **2009 (6) SCC 121**, and computed the compensation as stated below:-

Sl.No.	Head	Amount
1.	Loss of income	Rs.23,66,400/-
2.	Pain and Suffering	Rs.1,50,000/-
3.	Transportation Charges	Rs.50,000/-
4.	Extra Nourishment	Rs.40,000/-
5.	Loss of amenities	Rs.50,000/-
6.	Attender charges	Rs.50,000/-
7.	Medical Bills	Rs.5,51,530/-
	Total	Rs.32,58,000/-

8. Feeling aggrieved by the quantum of compensation awarded by the Tribunal, the 2nd respondent / insurance company has preferred this appeal.



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9. Learned counsel for the appellant/insurance company would

submit that the assessment of 58% partial permanent disability is on the higher side. The Tribunal, without any documentary evidence, has taken the monthly notional income of the petitioner/claimant based on surmises and conjuncture. Further, the compensation awarded for pain and suffering is also excessive. Accordingly, the learned counsel prayed to allow the Civil Miscellaneous Appeal.

10. Per contra, learned counsel appearing for the petitioner would argue that the accident occurred only due to the remiss act of the 1st respondent driver and hence, the Tribunal was right in fastening the entire liability on the R2/appellant. There is no reason to interfere with the findings with respect to negligent aspect. In the absence of any infirmity or illegality in awarding the compensation, he prayed to dismiss the Civil Miscellaneous Appeal.

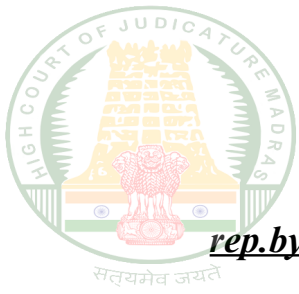
11. Heard the learned counsel on either side and perused the evidence and material available on record.



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12. The accident and the involvement of the vehicles are not disputed. The core contention of the 2nd respondent is that the petitioner/claimant was solely responsible for the accident, who carelessly drove the vehicle in a rash and negligent manner. However, upon perusal of the FIR (Ex.P1), it is evident that the driver of the 1st respondent vehicle was alleged to be the main cause for the accident, which has been corroborated by the evidence of P.W.1, who stated that the driver of the 1st respondent vehicle bearing Regn.No.TN-63-BL-7583 had parked the vehicle without any sign board. It is also to be noted that no contra evidence produced to disprove the accident. Thus, the Tribunal rightly arrived at a decision that the accident happened due to the careless act of the 1st respondent.

13. As regards the quantum, learned counsel for the appellant / insurance company averred that the percentage of disability arrived by the Tribunal was not in consonance with the established norms, which is not permissible in evidence in terms of the judgment of this Court in the cases of *The Oriental Insurance Co.Ltd., Cuddalore vs. Minor Giridharan*.



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rep.by his next friend and mother Lalitha and others (C.M.A.Nos.2337. of 2015 etc batch) dated 13.03.2020 and G.Arockiya Doss vs. S.Syed

Ibrahim and another (C.M.A.No.345 of 2022) dated 31.03.2022. He would further argue that the amount awarded for loss of income on the basis of the percentage derived cannot be accepted.

14. In the given case, the petitioner/claimant was subjected for medical examination by the Tribunal and a disability certificate was obtained assessing the disability at 58%. Considering the nature of injuries sustained by the petitioner/claimant, this Court is of the view that it would be just and proper to fix the percentage of disability at 38% instead of 58%. Accordingly, this Court arrived a sum of Rs.15,50,400/- as compensation under the head 'loss of income'. Similarly, the amount awarded under other heads also warrants a slight revision, as they are on the higher side.

15. Accordingly, the compensation awarded to the petitioner/1st respondent herein is hereby reduced and he is entitled to get a compensation of Rs.22,51,930/- (Rupees Twenty Two Lakhs Fifty One Thousand Nine Hundred and Thirty only). The revised compensation is as detailed below:-



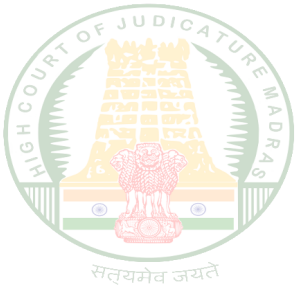
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Sl.No.	Head	Amount
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4.	Extra Nourishment	Rs.25,000/-
5.	Loss of amenities	Rs.25,000/-
6.	Attender charges	Rs.25,000/-
7.	Medical Bills	Rs.5,51,530/-
	Total	Rs.22,51,930/-

16. Therefore, the appellant / Insurance Company is directed to deposit the modified award amount of **Rs.22,51,930/-** (Rupees Twenty Two Lakhs Fifty One Thousand Nine Hundred and Thirty only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.662 of 2022 on the file of the Motor Accident Claims Tribunal, Special District Judge I, Cuddalore, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the petitioner/1st respondent herein is entitled to withdraw the same by filing proper application. Further, the petitioner / claimant is entitled for proportionate costs and Advocate fees as per Rules.



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AND
R.SAKTHIVEL,J.,
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17. In the result, this Civil Miscellaneous Appeal filed by the appellant / insurance company is allowed in part with proportionate costs as per modified Award passed in detail above. Consequently, connected Miscellaneous Petition is closed.

(J.N.B.J.,) (R.S.V,J.,)
24.01.2025

Index: Yes / No
Internet: Yes / No
Speaking Order/ Non Speaking Order
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To:

Motor Accident Claims Tribunal /
Special District Judge I,
Cuddalore.

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