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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

**CMA.No.2529 of 2018
and CMP. No.19289 of 2018**

United India Insurance Co. Ltd.,
No.74-A, Salai Road,
Trichy- 18.

... Appellant

-VS-

1. L.Raja

2. Shanmugam

.. Respondents

PRAYER: Civil Miscellaneous Petition has been filed under Section 173 of the Motor Vehicles Act, 1988 to set-aside the decree and judgement dated 20.02.2015 in O.P.No.354 of 2014 on the file of Motor Accident Claims Tribunal (Special Sub Judge), Dharmapuri.

For Appellant : Mr.D.Baskaran

For Respondent : R1 – No appearance
R2 - NDW

JUDGMENT

The appellant insurance company, aggrieved by the liability and quantum of compensation in the decree and judgement dated 20.02.2015 in O.P.No.354 of 2014 on the file of Motor Accident Claims Tribunal (Special



Sub Judge), Dharmapuri.

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2. The 1st respondent / claimant filed a claim petition on the ground that on 12.10.2013 at about 9.30 p.m. when he was riding his motor cycle bearing Reg. No.TN 29 AK 2601 near DNV artho care hospital, at that time, an opposite side, a two wheeler bearing Reg. No. TN 48 M 0384, driver by its rider, overtake a town bus, in a rash and negligent manner and dashed against the front side of the claimant two wheeler and caused grievous injuries. It is under these circumstances, the claim petition came to be filed before this Court seeking for payment of compensation.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent rider of the two wheeler. Having rendered such a finding, the total compensation was fixed at Rs.2,21,000/- under various heads and ordered pay and recovery.

4. The Insurance company aggrieved by the liability and quantum of compensation fixed by the Tribunal has filed the present appeal before this



5. The learned counsel for the appellant insurance company submitted that the Tribunal has adopted multiplier method without ascertaining whether there was any permanent disability due to the said injury and awarded a sum of Rs.1,68,000/- towards disability, which is too high. The medical board has highly exaggerated and assessed the disability at 25%. A compensation awarded by the Tribunal for a sum of Rs.2,21,000/- which is also highly excessive. Hence, this Court may set aside the award by allowing the appeal.

6. The learned counsel for the first respondent submitted that after considering all the witnesses and documentary evidence, the Tribunal has awarded compensation which is just and reasonable and the same does not warrant any interference.

7. Heard the learned counsel for the appellant and the first respondent and perused the materials available on record.

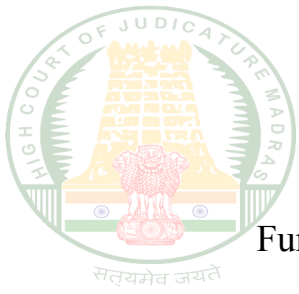
8. The factum of the case are not in dispute. The insurance company has preferred the appeal questioning the quantum and its liability arrived at by the



8. The short issue that arises for consideration in the present appeal is as to whether the insurance company can be saddled with the liability. There is no dispute with regard to the fact that as per the policy, two persons are entitled to travel in the two wheeler. However, in the present case, three persons travelled in the two wheeler. Therefore, the Tribunal has awarded pay and recover method. Hence, with regard to the liability, the present appeal is rejected.

9. In respect of quantum, the Tribunal has applied multiplier method for disability, which needs to be interfered with. The claimant has sustained fracture injury and the Tribunal has assessed the disability at 25% as permanent disability. As per the decision rendered by the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar, in the absence of functional disability*, the multiplier method adopted by the Tribunal is set aside. The accident had happened in the year 2013 and the disability assessed is at 25%. The head loss of earning power is modified as follows:

$$= 25\% \times 4000/- = 1,00,000/-$$



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Further, the Tribunal has awarded Rs.15,000/- and Rs.8,000/- towards pain and sufferings and loss of income during treatment period, which has to be modified. This Court is inclined to award a sum of Rs.40,000/- and Rs.20,000/- towards pain and sufferings and loss of income during treatment period respectively. The Tribunal has awarded a sum of Rs.5,000/- each towards transportation and extra nourishment, which is very meager and this Court is inclined to award a sum of Rs.10,000/- towards transportation and Rs.20,000/- towards extra nourishment.

10. The award passed by the Tribunal is modified as follows:

Heads	Amount awarded by the Tribunal (Rs.)	Modified Award Amount (Rs.)
Loss of earning power	1,68,000	1,00,000
Pain and sufferings	15,000	40,000
Loss of income during treatment period	8,000	20,000
Medical bills	10,000	10,000
Transportation	5,000	10,000
Extra nourishment	5,000	20,000
Mental agony	10,000	
total	2,21,000	2,00,000

11. The compensation awarded by the Tribunal at Rs.2,21,000/- is



reduced to Rs. 2,00,000/-. The liability fixed by the Tribunal is confirmed. The

appellant insurance company is directed to deposit the entire award amount as ordered by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment and thereafter, recover the same from the second respondent. Upon receipt of such payment, the Tribunal is directed to deposit the amount along with interest to the bank account of the claimant through RTGS within a period of two weeks thereafter. No costs.

12. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.01.2025

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The Motor Accident Claims Tribunal (Special Sub Judge), Dharmapuri.



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M.DHANDAPANI.,J

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