

C.M.A.(MD)No.347 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

**DATED : 21.03.2025**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**C.M.A.(MD)No.347 of 2024**

**and**

**C.M.P.(MD)Nos.4701 and 7487 of 2024**

The Branch Manager,  
United India Insurance Company Ltd.,  
D.No.104A, Ranga Building,  
Permanur Main Road,  
Salem – 636 007,  
Salem District.

... Appellant

Vs

1. P.Kandhan

2. M.Subashprabu

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 24.07.2023, passed in M.C.O.P.No.75 of 2019 on the file of the Motor Accident Claims Tribunal cum Subordinate Judge, Aruppukottai.

For Appellant : Mr.S.Royce Immanuel

For R-1 : Mr.M.Jothi Basu

For R-2 : No appearance.



*C.M.A.(MD)No.347 of 2024*

WEB COPY

## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed challenging the order 24.07.2023, made in M.C.O.P.No.75 of 2019 passed by the Motor Accidents Claims Tribunal cum Sub Ordinate Judge, Aruppukottai.

2. For the sake of convenience, the parties herein are referred to as per their rank before the Trial Court.

3. The brief facts in a nutshell are as follows:

(i) This is a case of injury. The petitioner was the claimant injured and the first respondent was the owner of the four-wheeler which involved in the accident and the second respondent is the Insurance Company, who is the appellant herein.

(ii) On 11.04.2019 at about 12:15 p.m., the petitioner was riding his two-wheeler bearing registration No.TN 67 BZ 3557 along Madurai -Thoothukudi National Highways road. While he was riding along the Palayampatti bye-pass junction from north to south to Palayampatti village, an ETIOS car bearing



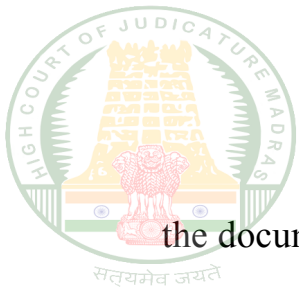
*C.M.A.(MD)No.347 of 2024*

registration No. TN 38 BV 1797 driven by its driver cum owner / first respondent in a rash and negligent manner dashed against the petitioner's two-wheeler. As a result of which, the petitioner was thrown away from his two-wheeler and he sustained several injuries in his upper lip, left side back, left elbow and grievous injuries in his head. He also suffered multiple fractures in his right knee and lacerated injuries all over his body and immediately, he was admitted in Madurai Meenakshi Mission Hospital for treatment from 11.04.2019 to 20.05.2019.

(iii)The Aruppukottai Town Police station registered a case in Crime No. 98 of 2019 under Sections 279, 337, 304(A) of IPC as against the first respondent driver. A motor accident claim petition was laid by the injured claiming compensation.

(iv)The learned Trial Court examined the injured as P.W.1 and 19 documents were marked as Ex.P.1 to Ex.P.9. No witnesses were examined on the side of the respondents and documents were also not marked. The disability certificate issued by the medical board was marked as Ex.C.I.

(v)On the basis of the arguments of both the parties and on the basis of



C.M.A.(MD)No.347 of 2024

the documents marked, the learned Trial Court had proceeded to pass an award of Rs.20,53,557/- by order dated 24.07.2023. The details of the compensation awarded by the learned Tribunal are as follows:-

| S.No. | Description                          | Amount         |
|-------|--------------------------------------|----------------|
| 1.    | Towards Partial Permanent Disability | Rs.1,85,000/-  |
| 2.    | Towards Loss of Income               | Rs.84,000/-    |
| 3.    | Towards Extra Nourishment            | Rs.20,000/-    |
| 4.    | Towards Pain and Sufferings          | Rs.75,000/-    |
| 5.    | Towards Transportation               | Rs.5,000/-     |
| 6.    | Towards Medical Expenses             | Rs.16,74,057/- |
| 7.    | Towards Cost of Attendant            | Rs.10,000/-    |
| 8.    | Towards damage to clothes            | Rs.500/-       |
|       | Total                                | Rs.20,53,557/- |

4. Challenging the award passed by the learned Tribunal, this Civil Miscellaneous Appeal has been filed.

5. The learned Counsel appearing for the second respondent/ Insurance Company categorically submitted that the medical bills relied upon by the learned Trial Court for the purpose of granting compensation of Rs.16,74,057/- towards medical expenses is not based on appropriate evidence, as the petitioner failed to produce proper medical bills before the learned Trial Court. Hence, the compensation awarded under the head of medical expenses is



*C.M.A.(MD)No.347 of 2024*

exorbitant and the same has to be struck out. That apart, he insisted that the injured, while riding along the Madurai – Thoothukudi National Highways, should have been more cautious and careful when turning around the accident spot. The accident had happened even only because of his negligence and carelessness. Hence, contributory negligence ought to have been fixed on him, which the learned Trial Court failed to do and on that basis, he pressed for allowing the appeal.

6. Per contra, the learned Counsel appearing for the petitioner, relying upon the discussion of the learned Trial Court under the head medical expenses, pointed out that the claimant / petitioner had duly submitted medical bills for a sum of Rs.16,74,057/- before the learned Trial Court which was marked as Ex.P.7 through P.W.1 at the time of evidence. That apart, he also contradicted the appellant's claim that the injured should have been more careful while riding the two-wheeler and his negligence was the cause of the accident. He further submitted that the learned Trial Court had been very clear in its findings and stated/observed that the second respondent / Insurance Company had not taken any diligent steps before the learned Trial Court either by examining a witness or by marking appropriate documents to substantiate their claim, that negligence was on the part of the rider of the two-wheeler.



C.M.A.(MD)No.347 of 2024

Therefore, the grounds on which the second respondent / Insurance Company has filed the appeal before this Court are baseless and the same should be negated and pressed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant/Insurance Company, the learned counsel appearing for the first respondent / petitioner and carefully perused the materials available on record.

8. The learned counsel for the Insurance Company relied upon the judgment in the case of ***United Insurance Company Limited Vs. Balasubramaniam<sup>1</sup>***, submitted that the compensation awarded under the head of medical expenditure has to be struck off for the sole reason that the same is based on two kinds of bills, Advance bill and Actual bill.

9. The learned Tribunal without differentiating two categories of bills had proceeded to add up both the bills and had awarded an exorbitant amount of Rs. 16,73,859/- under the head medical expenditure. A careful perusal of the various bills would reveal that, the deposit receipt dated 11.04.2019 bearing receipt No. 16181 for an amount of Rs.50,000/-. Receipt No.2977 dated 13.04.2019 for an amount of Rs. 50,000/-. Receipt No. 3218, dated 15.04.2019

---

<sup>1</sup> 2023 (2) TNMAC 694



*C.M.A.(MD)No.347 of 2024*

for an amount of Rs.3000/-. Receipt No. 3265, dated 15.04.2019 for an amount of Rs.1,00,000/-. Receipt No. 3220 dated 15.04.2019 for an amount of Rs. 27,000/-. Receipt No. 4213 dated 19.04.2019 for an amount of Rs. 14,000/-. Receipt No. 4910 dated 22.04.2019 for an amount of Rs. 30,000/- Receipt No. 138 dated 23.04.2019 for an amount of Rs.30,000/- Receipt No. 5919 dated 26.04.2019 for an amount of Rs.50,000/-. Receipt No. 7616, dated 03.05.2019 for an amount of Rs.40,000/-. Receipt No. 8195, dated 06.05.2019 for the amount of Rs.15,000/-. Receipt No. 8511, dated 07.05.2019 for an amount of Rs.15,00/- Receipt No. 9813, dated 12.05.2019 for an amount of Rs.40,000/-. Receipt No. 11295, dated 18.05.2019 for an amount of Rs.30,000/-. Receipt No. 13093, dated 25.05.2019 for an amount of Rs. 50,000/- Receipt No. 46371, dated 17.10.2019 for an amount of Rs.20,000/-. Receipt No. 366 for an amount of Rs.1500/- Advanced requisition slip dated nil bearing MRD No.678796 for an amount of Rs.15,000/-. Advance requisition slip dated 10.05.2019 for an amount of Rs.40,000/- and requisition slip No. 46923 dated 19.10.2019 for an amount of Rs.2250/- are all advance receipts.

10. When the final settlement was made by the claimant before the Meenakshi Mission Hospital and Research Centre, none of these advance amounts has been deducted, while settling the final amount. The total amount



C.M.A.(MD)No.347 of 2024

which has been paid by the claimant as advance by way of the above mentioned receipts is Rs.6,73,730/-.

11. This Court in the case of *United India Insurance Company Limited Vs. Balasubramanian and Others*<sup>2</sup>, has dealt with a similar case, in which this Court had set aside certain discharge summary bills. Similarly, in the instant case, there is no discrepancy in the bills, the only issue is that advance amount paid has not been deducted. While calculating the final settlement and the same has been added up along with the final settlement bills. Hence, the same has to be duly deducted. Accordingly, the award to be passed under the head, medical expenditure is modified by deducting an amount of Rs.6,73,713/- from Rs. 16,73,890/-, which would arrive at Rs.10,00,146/-.

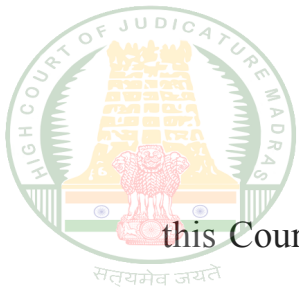
12. That apart, as far as the head towards partial disability, an amount of Rs.1,85,000/- has been awarded by the learned Tribunal, by fixing Rs.5,000/- for each 1% of partial permanent disability, adopting the dictum laid down in *China Thambi Vs. Deepa*<sup>3</sup>. However, the learned counsel for the claimant placed before me the judgment of the Hon'ble Division Bench in *Future Generali India Insurance Co. Ltd., v. Manivannan and another*<sup>4</sup>, in which

---

<sup>2</sup> Supra 1

<sup>3</sup> 2020 (1) TNMAC 617

<sup>4</sup> 2024 (1) TNMAC 598 (DB)



C.M.A.(MD)No.347 of 2024

this Court has awarded an amount @ 7.5% of disability or an accident which happened during the year 2017.

13. In the instant case, the accident happened in the year 2019. Accordingly, adopting to the same dictum in the case of ***Future Generali India Insurance Co. Ltd., v. Manivannan and another***<sup>5</sup>, the head towards partial permanent disability is modified for awarding each 1% of partial permanent disability calculating the disability as Rs.2,59,000/- (37 x Rs.7,000/- = Rs. 2,59,000/-).

14. Accordingly, the head partial permanent disability is modified, and enhanced from Rs.1,85,000/- to Rs.2,59,000/-.

15. However, calculating and perusing other heads of award, I am of the considered view that the learned Tribunal has not passed any award under the head future medical expenditure for which an amount of Rs.1,00,000/- is hereby awarded and accordingly, the award of the Tribunal is modified and the total is modified from Rs.20,53,557/- to Rs.15,53,646/-. In view of the above, this Civil Miscellaneous Appeal stands allowed.

---

<sup>5</sup> Supra 4



C.M.A.(MD)No.347 of 2024

WEB COPY

| Head                             | Compensation awarded before learned Tribunal | Compensation awarded before this Court | Reduced/Enhanced/ Confirmed |
|----------------------------------|----------------------------------------------|----------------------------------------|-----------------------------|
| (i)Partial Permanent Disability: | Rs.1,85,000/-                                | Rs.2,59,000/-                          | Enhanced                    |
| (ii)Loss of Income:              | Rs.84,000/-                                  | Rs.84,000/-                            | Confirmed                   |
| (iii)Extra Nourishment:          | Rs.20,000/-                                  | Rs.20,000/-                            | Confirmed                   |
| (iv)Pain and Suffering:          | Rs.75,000/-                                  | Rs.75,000/-                            | Confirmed                   |
| (v)Transportation:               | Rs.5,000/-                                   | Rs.5,000/-                             | Confirmed                   |
| (vi)Medical Expenses:            | Rs.16,74,057/-                               | Rs.10,00,146/-                         | Reduced                     |
| (vii)Attendant charges           | Rs.10,000/-                                  | Rs.10,000/-                            | Confirmed                   |
| (viii)Damage to clothes:         | Rs.500/-                                     | Rs.500/-                               | Confirmed                   |
| (ix)Future Medical Expenses:     | -                                            | Rs.1,00,000/-                          | Enhanced                    |
| Total compensation awarded :     | Rs.20,53,557/-                               | Rs.15,53,646/-                         | Reduced                     |

16. The first respondent/claimant is entitled to a sum of Rs.15,53,646/- with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The appellant/insurance company is directed to deposit the



*C.M.A.(MD)No.347 of 2024*

aforsaid amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, after deducting any amount received by him earlier. The first respondent/claimant is not entitled for interest for the default period, if there is any. The appellant/insurance company is entitled to withdraw the excess award amount, if any already deposited. Consequently, connected miscellaneous petitions are closed. No costs.

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
Mrn/jbr

**21.03.2025**

To

- 1.The Motor Accident Claims Tribunal cum Subordinate Judge,  
Aruppukottai.
- 2.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*C.M.A.(MD)No.347 of 2024*

**L.VICTORIA GOWRI, J.,**

Mrn/jbr

**C.M.A.(MD)No.347 of 2024**

**21.03.2025**