



CMA(MD)No.146 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.01.2026

CORAM:

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

AND

THE HONOURABLE MS.JUSTICE R. POORNIMA

CMA(MD)No.146 of 2022

and

CMP(MD) No.1333 of 2022

The New India Assurance Company Ltd.,
its through Branch Manager
Door No.12, Parvathy Plaza,
Ground Floor, 70 Feet Road,
Ellis Nagar
Madurai

... Appellant

vs.

1. Robinson
2. Balaji

..Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, against the decree and judgment dated 28.10.2021 made in MCOP No.764 of 2018 on the file of the learned Special Sub Judge, Tirunelveli.

For Appellant : Mr.A.Ilango



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JUDGMENT

[Judgment of the Court was made by G.K. ILANTHIRAIYAN, J.]

This Civil Miscellaneous Appeal has been preferred as against the award passed in MCOP No.764 of 2018, dated 28.10.2021, on the file of the learned Special Sub Judge, Tirunelveli.

2. The first respondent/claimant filed claim petition seeking compensation under Section 166 of the Motor Vehicles Act for the injuries sustained by him in the motor vehicle accident on 07.11.2017 at about 06.15 pm. When the claimant was riding his motor cycle bearing Reg.No.TN 72 K 7417 from North to South on the left side of the Melapalayam to Kokkirakulam main road near Kurichi Railway Gate, from the opposite side a Hyundai Eon Car bearing Reg. No TN 10 AS4021 insured with the appellant was driven by the second respondent in a rash and negligent manner and dashed against the claimant's motor cycle. Due to which, he sustained multiple injuries all over his body and also suffered fracture over his right leg. Immediately he was taken to



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TVMCH Hospital at Highground and from there he was referred to Chella Suriya Hospital at Rahmath Nagar, Tirunelveli. He was admitted as inpatient from 07.11.2017 to 26.11.2027 and he has undergone several surgeries and also fixed with steel plate and rod on his right leg. Even after discharge from the hospital he was taking treatment continuously as out patient. He incurred huge medical expenses. On the complaint the Inspector of Police, Traffic Investigation Wing registered First Information Report in Crime No. 283 of 2017 for the offences under Sections 279 and 337 of IPC as against the second respondent herein. Thereafter, the claimant filed a petition claiming compensation for the loss of his income and also for medical expenses.

3. In order to prove the same, the claimant was examined as P.W.1 and through him 16 documents were marked as Ex.P.1 to P.16. On the side of the appellant, they had examined R.W.1 to R.W.3 and marked 9 documents. The Court has marked one document as Ex.C.1.



5. The learned counsel appearing for the appellant would submit that the medical certificate in so far as the disability is concerned it was only 65% and even then the Tribunal applied multiplier method and awarded excess compensation to the claimant. The Tribunal also awarded future prospectus to the claimant under the head loss of income, which is not correct, since the injured claimant sustained only one grievous injury.

6. A perusal of the record reveals that the Tribunal rightly concluded that the accident had occurred due to rash and negligent driving of the second respondent herein. In so far as compensation is



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concerned, the claimant suffered 65% of partial disability due to the injuries sustained during the accident. The claimant was Television promotional worker and he was earning Rs.27,000/- per month. He was aged about 44 years at the time of accident. After considering the disability certificate, which was marked as Ex.C.1, the Tribunal had taken the age of the injured claimant as 44 and fixed his monthly income as notional income to the tune of Rs.9,000/- and awarded compensation.

7. A perusal of Ex.C.1 reveals that the claimant suffered with fracture on his right femur, swelling and tenderness and deformity over right knee laceration of size 8x 3 cm x bone deep seen over front of right knee. 4 cm long sutured wound seen over back of upper part of right fore arm. 0.5x0.5 cm abrasion below chin. Therefore, the grounds raised by the appellant cannot be sustained since the same were not substantiated with any piece of evidence. Further, the Tribunal failed to follow the dictum laid down by the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay kumar reported in 2011(1)SCCpage 343, wherein it is held as follows:



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14) *The observations of the Hon'ble Supreme Court in the case of Raj Kumar Vs. Ajay Kumar, reported in 2011(1) SCC Page 343, whereby the methodology for determining the functional disability has been discussed in paragraphs 13,14 and 15 are as follows: "13.Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life.) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.*

8. In the case on hand, admittedly the claimant suffered partial permanent disability to the tune of 65% and is able to work. Even according to him, he is a TV Promotional worker and he can still continue his work, therefore, it is held that the Tribunal failed to follow the procedure laid down by the Hon'ble Supreme Court in the above



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case. Hence, the claimant is not entitled to compensation towards loss of income and the compensation awarded under the head of loss of income is set aside. However, the claimant is entitled for compensation for *partial permanent disability of 65%* at the rate of Rs.7,000/- for each percentage of partial permanent disability. Accordingly, this Court awards Rs.4,55,000/- under the head of partial permanent disability. In respect of other heads, the award of the Tribunal reasonable. Accordingly the award passed by the Tribunal is re-quantified as under:-

Head	Award of the Tribunal	Award of this Court	Remarks
Loss of Income	12,28,500/-	-	Set aside
For Permanent Disability (65% x Rs,7,000/-)	-	4,55,000/-	Granted
Medical Bill	6,48,055/-	6,48,055/-	Confirmed
Pain and suffering	40,000/-	40,000/-	Confirmed
Loss of convenience	45,000/-	45,000/-	Confirmed
Transport	25,000/-	25,000/-	Confirmed
Nutrition	30,000/-	30,000/-	Confirmed
Total	20,11,555/-	12,43,055/-	

9. In the result, the Civil Miscellaneous Appeal is **partly allowed** and the award passed by the Tribunal is modified to the effect that the



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claimants are entitled for a sum of **Rs.12,43,055/-** as compensation along with interest @ 7.5% per annum from the date of petition till realization.

The appellant/insurance company is directed to deposit the modified award amount with interest and costs, within a period of two months from the date of this judgment, if not already deposited. On such deposit being made, the 1st respondent/claimant is permitted to withdraw entire amount by filing proper application before the Tribunal. Excess amount if any, shall be returned to the appellant. No costs. Consequently, connected Miscellaneous Petition is closed.

[G.K.I., J.] [R.P., J.]

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Index : Yes / No

Neutral Citation : Yes / No

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To:

The Motor Accident Claims Tribunal (III Additional Sub Court, Trichy).



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