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C.M.A.No.3349 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

C.M.A.No.3349 of 2012

S.Selvakumar

... Appellant/petitioner

Vs.

1.G.Balgis

[R1 remained ex-parte before Tribunal.

Hence, notice to R1 dispensed with]

2. The Branch Manager,  
New India Assurance Company Ltd.,  
Branch Office,  
No.45, 5<sup>th</sup> Floor, Moore Market,  
Chennai -1.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 10.09.2008, made in M.C.O.P.No.1482 of 2006, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.M.Sriram

For R1 : Dispensed with

For R2 : Mr.P.Kandasamy



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## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 10.09.2008 made in M.C.O.P.No.1482 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

2. The parties are referred to hereunder according to status and ranking before the Trial Court.

3. According to the claimant, On 14.05.2004 at about 6.45 p.m., while he was travelling in a container lorry as a cleaner, bearing registration No.TN 04 A 1110 from Kathikuppam - Krishnagiri road, near Kaalikoil, suddenly the container driver lost its control and hit against one Jahir hussain, overturned on the right side of the road. The driver of the container lorry died on the spot. Due to the accident, the petitioner has sustained grievous injuries and criminal case had been registered in Crime No.127/2004 by Kathikuppam Police. The petitioner was admitted as in-patient to the Government Hospital, Krishnagiri and thereafter, he was admitted into Ramana Maharishi Hospital, Thiruvannamalai. Hence, he



filed a petition claiming a sum of Rs.4,00,000/- as compensation for the injuries sustained by him in the accident.

4. The second respondent filed counter affidavit and denied all the averments made by the claimant and also denied the manner of accident as alleged by the claimants. Due to the negligent act of the driver of the container lorry, the accident occurred and that the Insurance company is not liable to pay compensation to the appellant. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimant, he examined himself as P.W.1 and one Doctor, Mr.T.V.Gandhi was examined as P.W.2 and marked documents as Exs.P1 to P7. On the side of the second respondent no witness was examined and no documents marked.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the container lorry and directed the first



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and second respondent-Insurance Company to pay a sum of Rs.51,626/- as compensation to the petitioner.

7. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

8. It is submitted by the learned counsel for the appellant that the appellant has sustained following injuries: “மூக்கில் அடி தண்டு எலும்பும், லம்பார் வெர்டிபிரா எலும்பு L2 நகங்கி முறிந்தமைக்கும் சிகிச்சைப் பெற்று, பின்னர் மேல் சிகிச்சைக்காக ரமண மகரிஜி ரங்கம்மாள் மருத்துவமனை, திருவண்ணாமலையில் 16.05.2004 முதல் 24.05.2004 வரை சிகிச்சைப் பெற்ற விபரங்களை சிகிச்சை ஆவணங்கள் மூலமாகத் தெரிந்து கொண்டேன். அவருக்கு முக்கு மற்றும் முதுகு தண்டுவட எலும்பு (லம்பார் பகுதி)-க்கு நுண்கதிர் செய்து பார்த்ததில் அந்த L2 எலும்பு நகங்கி முறிந்துள்ளது தெரிகிறது. இதனால் இவரது இரண்டு கால்களிலும் 1/5 திறன் குறைந்து



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காணப்படுகிறது. இதனால் இவரால் நீண்ட தூரம் நடக்கவோ, நிற்கவோ, ஓடவோ முன்புபோல் இயலாது மற்றும் மாடிப்படிகள் ஏறவும், இறங்கவும் சிரமம் ஏற்படும். இவருக்கு முக்கில் ஏற்பட்ட காயத்தினால் அடிக்கடி சலி பிடிக்க வாய்ப்புள்ளது. கடினமான உடல் உழைப்புகளை முன்புபோல் செய்ய இயலாது.” The Doctor has assessed his disability as 40%. But the Tribunal without giving any reasons reduced the disability at 25% and the same has to be revised by this Court. Similarly, in other heads also the amounts granted by the Tribunal is on the lower side and prays to enhance the same.

9. The learned counsel for the second respondent/Insurance Company has submitted that the Doctor who has assessed the injured and given disability certificate as 40% since only one injury on the L2 of spine, the Tribunal has reduced the disability 40% in to 25% and the same is proper and considering the year of the accident, the Tribunal granting Rs.1,000/- per percentage of disability and other heads granted by the Tribunal are also reasonable.



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10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent-Insurance Company and perused the entire materials placed on record.

11. The Tribunal has awarded compensation on various heads as follows: For Disability a sum of Rs.25,000/- (25% disability; Rs.1000/- per percentage); For Pain and Sufferings a sum of Rs.15,000/-; For Mental Agony a sum of Rs.5,000/-; For Transportation Charges a sum of Rs.1,000/- For Nutrition a sum of Rs.2,000/- and for Medical Bills a sum of Rs.3,626/- In all a total sum of Rs.51,626/- was awarded.

12. The Doctor who has assessed the disability has been examined as P.W.2 and it is his evidence that on examination, he has found that the fracture on the nasal bone and also spine L2 fractures. Due to the L2 spine injury, the performance of the legs have been reduced to 1/5% and hence, he assessed the disability as 40%. By Ex.P3-Discharge Certificate, the Tribunal has arrived its conclusion that the injured has admitted in to the hospital on 16.05.2004 and discharged on 25.04.2004. He has not



undergone any surgery or any other subsequent functional disability in order to affect the regular activities of the claimant.

13. I have also perused the Discharge Certificate-Ex.P3. On a perusal of the same, it shows that the claimant was found to be suffering from L2 Wedge compression and it is suggested of strict bed rest, surgeries suggested for further treatment. No further documents relating to treatment were marked. As observed by the Tribunal that the assessment of disability is on the higher side and the liability to be fixed on the injured as 25% is appropriate and this Court accepts the finding of the Tribunal that the disability assessed by the claimant is to be assessed only as 25%. However, the Tribunal has awarded Rs.1,000/- per percentage and considering the nature of the injury, and the other injuries listed in the Accident Register shows that the petitioner suffered external injuries as well as fracture in the nasal bone and L2 wedge compression. Accordingly, I am inclined to modify as Rs.1,500/- per percentage of injury, and a sum of Rs.37,500/- [25 X 1,500] granted under the head disability.



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14. The Tribunal has granted Rs.15,000/- as Pain and sufferings and the Tribunal has not awarded any temporary loss of income for the treatment period i.e., on 16.05.2004 to 24.05.2004, I am inclined to grant one month salary as loss of income during the period of treatment and attender charges. Accordingly, Rs.4,000/- is awarded as loss of income for the treatment period and Rs.4,000/- as attender charges. In other heads the compensation awarded by the Tribunal are concerned they are just and reasonable hence, needs no revision on the other heads. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description                            | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|----------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                             | Rs.25,000/-                     | Rs.37,500/-                       | Enhanced                               |
| 2.    | Pain and sufferings                    | Rs.15,000/-                     | Rs.15,000/-                       | Confirmed                              |
| 3.    | Mental agony                           | Rs.5,000/-                      | Rs.5,000/-                        | Confirmed                              |
| 4.    | Transportation                         | Rs.1,000/-                      | Rs.1,000/-                        | Confirmed                              |
| 5.    | Extra nourishment                      | Rs.2,000/-                      | Rs.2,000/-                        | Confirmed                              |
| 6.    | Medical Bills                          | Rs.3,626/-                      | Rs.3,626/-                        | Confirmed                              |
| 7.    | Loss of Income during treatment period | ----                            | Rs.4,000/-                        | Granted                                |
| 8.    | Attender Charges                       | ----                            | Rs.4,000/-                        | Granted                                |
|       | <b>Total</b>                           | <b>Rs.51,626/-</b>              | <b>Rs.72,126/-</b>                | <b>Enhanced by Rs.20,500/-</b>         |



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15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.51,626/- is hereby enhanced to Rs.72,126/- [Rupees Seventy Two Thousand One Hundred and Twenty Six only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1482 of 2006 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. Since this Court has enhanced the compensation, the appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. It is made clear that the appellant is not entitled to any



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interest for the delay period as per the order of this Court dated 31.10.2012 made in M.P.No.1 of 2011 in C.M.A.SR.No.90771 of 2011. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs.

06.07.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Chief Judicial Magistrate,  
Motor Accidents Claims Tribunal,  
Krishnagiri.

2.The Section Officer,  
VR Section,  
High Court, Madras.



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K.RAJASEKAR,J.

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