



C.M.A.No.3701 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3701 of 2019

B.Idhayakumar

... Appellant

..Vs..

1.M.Shanmugam

2.United India Insurance
Company Ltd.,
104-A, Peramanur Main Road,
Peramanur,
Salem 636 007.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.01.2019 passed in M.C.O.P. No.746 of 2017 on the file of the Motor Accidents Claims Tribunal/Special Sub Judge No.2, Salem.

For Appellant : Mr.A.Sathish Kumar

For Respondents : Mr.C.Paranthaman for R2

R1-left

JUDGMENT



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The appellant/claimant viz., B.Idhayakumar, unsatisfied with the quantum of compensation, awarded by the Tribunal under the impugned award, dated 25.01.2019, passed by the Motor Accidents Claims Tribunal/Special Sub Judge No.2, Salem, in M.C.O.P. No.746 of 2017, has preferred this appeal seeking for enhancement.

2.The Motor Accidents Claims Tribunal, under the impugned award, has awarded a compensation of Rs.1,45,060/-/- together with interest at the rate of 7.5% and costs to the appellant/claimant, which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Functional Disability of 4.5% at Rs.22,68,000/- (7500 x 12 + 40% x 18)	1,02,060/-
Pain and suffering	10,000/-
Loss of amenities	20,000/-
Transportation charges	2,500/-
Extra Nourishment	5,000/-
Attender charges	5,000/-
Damages to clothes	500/-
Total	1,45,060/-

3.On 19.01.2017, due to the accident caused by a vehicle, owned and



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driven by the first respondent and insured with the second respondent, the appellant/claimant has sustained left hand elbow bone fractures and grievous injuries all over his body, viz., type I open comminuted fracture humerus left. Therefore, he preferred a Claim Petition before the Motor Accidents Claims Tribunal/Special District Judge, Salem seeking compensation for the injuries sustained by him.

4.Before the Tribunal, the appellant/claimant has filed four documents, which were marked as Exs.P1 to Ex.P4 and examined himself as P.W.1. On the side of the second respondent/Insurance Company, no document was marked and no witness was examined. Wound Certificate was marked as Ex.C.1. Since the appellant/claimant had not possessed valid licence at the time of accident, the Motor Accidents Claims Tribunal fixed contributory negligence at 80% on the part of the second respondent/Insurance Company and 20% on the part of the appellant/claimant.

5.The learned counsel appearing on behalf of the appellant/claimant



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mainly contended that the compensation awarded by the Motor Accidents Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. As far as the contributory negligence aspect is concerned, in the absence of any material evidence to prove the negligence on the part of the appellant/claimant, the Tribunal had committed grave error in fixing the contributory negligence on the part of the appellant/claimant at 20%. The appellant/claimant had sustained left hand elbow bone fractures and grievous injuries all over his body and taken treatment at Dharan Hospital, Salem as an inpatient from 19.01.2017 to 22.01.2017 and also taken treatment as an outpatient as seen from Exhibit P3/discharge summary, issued by the said hospital. Moreover, the Medical Board assessed and issued Certificate certifying that the appellant/claimant sustained 18% permanent disability due to the above injuries sustained by him. However, the Tribunal has reduced the same and assessed the disability only at 4.5%. The functional disability awarded by the Tribunal as seen from the impugned award is Rs.1,02,060/- and the same has to be enhanced. As the quantum of compensation awarded under the other heads are also very meagre, the total compensation has been considerably reduced. Hence,



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the learned counsel for the appellant/claimant prays for enhancement of the Award.

6.The learned counsel appearing on behalf of the second respondent/ Insurance Company refuted the contention raised by the appellant/claimant by stating that the appellant/claimant did not suffer any grievous injuries and he had not taken treatment continuously in view of the fact that the injuries are not so grave. The Tribunal has rightly fixed the contributory negligence on the part of the appellant/claimant. Therefore, the Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal has to be confirmed and the appeal has to be dismissed.

7.On 19.01.2017 at 06.30 p.m., while the appellant/claimant riding his TVS XL Super bearing Registration No.TN 30 AJ 8991, a vehicle, namely, TVS XL Super bearing Registration No.TN 30 AA 5209, driven by the first respondent, hit the appellant's vehicle and caused the accident. Due to the said accident, the appellant/claimant sustained grievous injuries viz.,



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left hand elbow bone fractures and multiple injuries all over his body. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the contributory negligence is concerned, the Tribunal had fixed 80% and 20% on the part of the second respondent/Insurance Company and the appellant/claimant respectively since the appellant/claimant had not possessed any valid driving licence at the time of accident. In the absence of any such proof, the appellant/claimant is also responsible for the accident. Therefore, in the considered view of this Court, the contributory negligence fixed at 80% and 20% on the part of the second respondent/Insurance Company and the appellant/claimant respectively needs no interference.

8.It could be seen from records that the Medical Board assessed Permanent Disability at 18% for the injuries sustained by the appellant/claimant. However, the Tribunal has reduced the same into 4.5% towards Functional Disability. The grievous injuries caused disability to the appellant/claimant and due to which, he was incapacitated to perform his work in a routine and normal manner. In the considered view of this Court,



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after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the appellant/claimant at 18% as assessed by the Medical Board.

9.The Tribunal has awarded a sum of Rs.7,500/- towards monthly income, which is very meagre. It is stated in the Claim Petition that the appellant/claimant was working as a Mason (Coolie) at the time of accident and was earning Rs.15,000/- and he was not able to do any work as he did before the accident. This apart, the age of the appellant/claimant at the time of accident is 24 years. Taking note of the present escalation of prices, the monthly income of the appellant/claimant, fixed by the Tribunal at Rs.7,500/- is improper. In view of the fact that the appellant/claimant was working as Mason, this Court is of the considered view that it would be appropriate to fix a sum of Rs.10,000/- towards monthly income. The Tribunal has awarded Rs.10,000/- towards pain and sufferings, Rs.2,500/- towards Transportation and Rs.5,000/- towards Attender Charges. As the appellant/claimant sustained grievous injuries viz., left hand elbow bone



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fractures and malunion of left humerus and multiple injuries all over his body, he was not able to lift the objects over his head. Therefore, the appellant/claimant would have suffered much pain at his left shoulder and would have spent considerable amount towards attender charges. Therefore, in the considered view of this Court, it would be appropriate to award Rs.20,000/- towards pain and sufferings, Rs.5,000/- towards Transportation and Rs.20,000/- towards Attender charges.

10. Insofar as the other heads of the compensation, viz., Loss of Amenities, Extra Nourishment and Damages to clothes are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

11. For the foregoing reasons, the award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of income	3,88,800/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
10,000x12x18x18/100	
Pain and suffering	20,000/-
Loss of amenities	20,000/-
Transportation charges	5,000/-
Extra Nourishment	5,000/-
Attender charges	20,000/-
Damages to clothes	500/-
Total	4,59,300/-
(-) 20% contributory negligence	91,860/-
Total compensation payable by R2	3,67,440/-

Accordingly, the appellant/claimant is entitled to a compensation of Rs.3,67,440/- (Rupees Three Lakhs Sixty Seven Thousand Four Hundred and Forty only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

12. In the result,



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(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,45,060/- to Rs.3,67,440/-. No costs.

(ii) The second respondent/Insurance Company is directed to deposit the revised compensation of Rs.3,67,440/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS.

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Index:Yes/No
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WEB COPY To

- 1.The Motor Accidents Claims Tribunal/
Special Sub Judge No.2, Salem.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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