



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1803 of 2020

(Through Video Conferencing)

A.Ramasamy

...Appellant/Petitioner

vs.

1.Aghin Roadways

No.37/5, Mulakathavu Panthakal,

Mahi (M),

Pondicherry 673 310.

(Since R1 remained exparte before the
Tribunal, his presence may be dispensed with)

2.Reliance General Insurance Company Ltd.,

No.6, Haddows Road,

Chennai 600 006.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the award and Decree dated 09.08.2019 made in M.A.C.T.O.P.No.4653 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.2) Small Causes Court, Chennai.

For Appellant : Mr.A.G.F.Terry Chella Raja

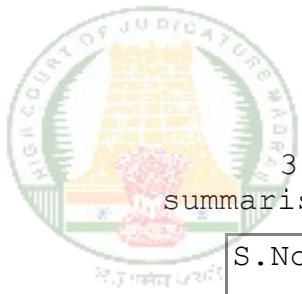
For 2nd respondent : Mr.K.Vinod

Respondent-1 : Exparte

J U D G M E N T

The claimant is the appellant in this appeal. He is aggrieved by the impugned Judgment and decree dated 09.08.2019 passed by the Motor Accident Claims Tribunal (Special Sub Court No.2) Small Causes Court, Chennai in M.C.O.P.No.4653 of 2014.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,80,400/- as compensation together with interest at 7.5% per annum from the date of claim petition till the date of payment, to the appellant/claimant.



3. The break up of the amount awarded by the Tribunal are summarised below:-

S.No.	Heads	Amount awarded by the Tribunal
1	Permanent disability	Rs. 27,000/-
2	Pain and sufferings	Rs. 50,000/-
3	Loss of income	Rs. 54,000/-
4	Transport to hospital	Rs. 15,000/-
5	Extra nourishment	Rs. 20,000/-
6	Damage to clothes	Rs. 1,000/-
7	Attender charges	Rs. 15,000/-
6	Medical expenses	Rs.1,68,344.40
7	Future Medical expenses	Rs. 20,000/-
8	Mental agony	Rs. 10,000/-
	Total	Rs.3,80,344.40 /- rounded off to Rs.3,80,400/-

4. In this appeal, the appellant/claimant seeks for enhancement of compensation.

5. The case of the appellant is that on 10.04.2014 at about 10.00 hrs. when the appellant was driving his Mahindra Maxximo Van bearing Reg.No.TN.18.K.2191 near Mundiyaambakkam Govt. Hospital, the claimant has stopped his vehicle. It is stated that a lorry bearing Reg.No.TN PY 03 2444 belonging to the 1st respondent insured with the 2nd respondent was driven in a rash and negligent manner and hit the said van, as a result of which, the appellant sustained grievous injuries.

6. As per Ex.C.1 - disability certificate of the appellant, he suffered the following injuries:-

" Fracture both bone left leg.. left knee ROM is full and free and left ankle ROM is restricted, the total disability due to this injury is about 9% ."

7. Under these circumstances, a claim petition was filed for compensation by the appellant/claimant before the Tribunal. After considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.3,80,400/- and interest as compensation.

8. The learned counsel for the appellant submits that the Tribunal has awarded low compensation by considering 9% disability by applying percentage method. It is submitted that the compensation awarded is disproportionate to the injuries



suffered albeit "permanent disability" of the appellant/claimant.

9. The learned counsel for the 2nd respondent Insurance company submits that the appellant has claimed that he was working as a driver but has not produced any evidence to prove either his avocation or income and therefore the Tribunal has awarded a sum of Rs.3,80,400/- which is a just compensation to the appellant. Hence, he prays for dismissal of the present appeal.

10. I have considered the arguments advanced by the learned counsel for both sides and I have also perused the evidence on record.

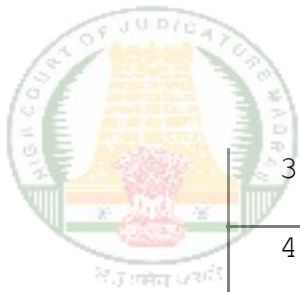
11. The appellant was on wheels of the Mahindra Maxximo Van bearing registration No.TN-18-K-2191 when it was hit by a lorry bearing registration No.PY-03-2444 of the first respondent. In the process, the Mahindra Maxximo Van hit three other vehicles which were in front of it, as a result of which, all the vehicles got damaged. Due to the impact of the accident, the appellant also suffered injuries.

12. Considering the fact that the appellant was injured while in the vehicle, there cannot be a dispute that the appellant was a driver. The said Van driven by the appellant belongs to one K.Palraj. Therefore, it is beyond any shadow of doubt that the appellant was the driver of the said Van. The said K.Palraj was his employer. In any event, the second respondent Insurance Company has not questioned the status of the appellant as the driver of the said Van before the Tribunal. Therefore, such a defence is not available before this Court.

13. Considering the fact that there is a restricted movement of his left ankle and left knee and the appellant was aged about 54 years and therefore the accident is of the year 2014, this court is inclined to conclude that the appellant was indeed a driver and he was earning a sum of Rs.9,000/- p.m, consequently, there shall be an additional compensation of 10% for future prospects.

14. In fine, the compensation awarded by the Tribunal, is partially enhanced as follows:

S.No.	Heads	Amount awarded by this Court
1	Permanent disability 9,000 + 900 (10% future prospects) (9900 x 12 x11 x 9/100)	Rs. 1,17,612/-
2	Pain and sufferings	Rs. 50,000/-



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3	Transport expenses	Rs. 15,000/-
4	Extra nourishment	Rs. 20,000/-
5	Medical expenses	Rs. 1,68,344/-
6	Future Medical expenses	Rs. 20,000/-
7	Mental agony	Rs. 10,000/-
8	Damage to clothes and articles	Rs. 1,000/-
9	Attender charges	Rs. 15,000/-
		Rs. 4,16,956/- rounded off to Rs.4,17,0 00/-

15. Since the amount is awarded towards future prospects also, there is no separate amount towards loss of income. Accordingly, a sum of Rs.54,000/- towards loss of income is hereby deleted.

16. The 2rd respondent Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs. 4,17,000/- together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

17. On such deposit, the appellant/claimant is permitted to withdraw the aforesaid amount of compensation, less any amount already withdrawn, by filing suitable application before the Tribunal.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



kkd
To

The Motor Accident Claims Tribunal
(Special Sub Court No.2)
Small Causes Court, Chennai.

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+1 CC to M/s.M. Malar, Advocate sr 25424.

+1 CC to Mrs.Elveera Ravindran, Advocate sr 25162 (13/12/2021)

C.M.A.No.1803 of 2020

RLD(CO)
SP(19/11/2021)