



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A. No. 2950 of 2011

M.Thiruvalagu

...Appellant/Petitioner

Vs

1.A.Aarokiasamy

2.The New India Assurance Co.Ltd,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road,
Tirupur

... Respondents/Respondents

Prayer: The Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 30.06.2011 in M.C.O.P.No.627 of 2009 on the file of the learned Motor Accident Claims Tribunal, The Additional District Judge, Fast Track Court No.IV, Coimbatore at Tirupur.

For Appellant : Ms.J.Prithivi for
Mr.S.Kaithamalai Kumaran

For R.1 : No appearance

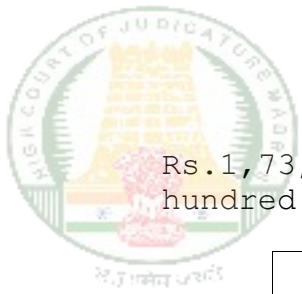
For R.2 : Ms.A.Salomi

JUDGMENT

This appeal has been filed by the claimant, questioning the findings of the Tribunal, exonerating the liability of the second respondent/Insurance Company as well as seeking enhancement of compensation, awarded by the Tribunal, under the impugned award dated 30.06.2011 in MCOP No.627 of 2009 passed by Additional District/Motor Accidents Claims Tribunal Judge, Fast Track Court No.IV, Coimbatore at Tirupur.

2. The Tribunal has exonerated the liability of the second respondent/Insurance Company to pay the determined compensation on the ground that the appellant/claimant was a gratuitous passenger in a Mini Door Auto bearing Registration No.TN-58.K.9012.

3. The Tribunal has awarded a total compensation of



WEB COPY

Rs.1,73,100/- (Rupees One Lakhs Seventy three thousand one hundred only) to the appellant/claimant as detailed hereinunder:-

Heads	Amount awarded by the Tribunal (Rs.)
Permanent Disability (35%) (Rs.2,000/- per percentage)	70,000/-
Pain and sufferings	17,500/-
Nutrition	5,000/-
Transport to hospital expenses	2,000/-
Loss of income	5,000/-
Loss of amenities	5,000/-
For attender charge	2,000/-
For medical expenses as per Ex.A.7	66,600/-
Total compensation	1,73,100/-

4. Insofar as the first ground raised by the appellant/claimant viz., that the Tribunal has erroneously exonerated the liability of the second respondent/Insurance Company is concerned, this Court is of the considered view that the Tribunal has rightly exonerated the liability of the second respondent.

5. The appellant/claimant, even in his claim petition filed before the Tribunal, has pleaded that he was travelling in the cabin of Piaggio Mini Door Auto, bearing Registration No.TN-58.K.9012. Being a Mini Door Auto, there can be only one person in the cabin viz., the driver.

6. Admittedly, the appellant was not the driver, but he claims to be the representative of the owner of the goods, which was alleged to have been carried in the auto.

7. A consistent stand has been taken by the second respondent/Insurance Company before the Tribunal that the appellant/claimant was a gratuitous passenger in a goods vehicle. The Insurance Policy which has been marked as Ex.A.10 also reveals that the policy gives coverage only for one person.

8. The Tribunal has taken into consideration all the aforementioned factors and only thereafter, has exonerated the liability of the second respondent/Insurance Company.

9. Insofar as the second contention raised by the



appellant that the quantum of compensation awarded by the Tribunal in inadequate is concerned, this Court is of the considered view that the appellant is entitled for an enhanced compensation under certain heads.

WEB COPY

10. The appellant/claimant has sustained grievous injuries on his head, fracture of mandible with facial, lower jaw and lip injury and other injuries. The Doctor, who examined the appellant/claimant has assessed the disability of the claimant at 35% as seen from the disability certificate which has been marked as Ex.A.11 before the Tribunal. The Tribunal has accepted the said assessment and has awarded a compensation of Rs.70,000/-towards disability at 35%. (Rs.2,000/-per percentage). The accident had occurred in the year 2009. Therefore, after giving due consideration to the year of the accident and the nature of injuries sustained by the appellant/claimant, this Court is of the considered view that the assessment made by the Tribunal is just and reasonable and the same is confirmed.

11. The Tribunal has awarded a compensation of Rs.17,500/- towards pain and suffering; Rs.5,000/- towards Nutrition; Rs.2,000/-towards Transportation; Rs,5,000/- towards loss of income during the treatment period; Rs.5,000/-towards loss of amenities and Rs.2,000/- towards loss of attender charges, which requires enhancement in view of the fact that the Tribunal has failed to take into consideration the nature of injuries sustained by the appellant/claimant referred to supra as well as the year of the accident.

12. After giving due consideration to the year of the accident and also the nature of the injuries sustained by the appellant/claimant, this Court enhances the compensation to Rs.20,000/-towards pain and sufferings from Rs.17,500/-; towards Nutrition from Rs.5,000/- to Rs.10,000/-; towards Transportation from Rs.2,000/- to Rs.10,000/-; towards loss of income during the treatment period from Rs.5,000/- to Rs.10,000/-(for a period of two months, calculated at Rs.5,000/-per month); towards loss of amenities from Rs.5,000/- to Rs.10,000/- and towards attender charges from Rs.2,000/- to Rs.10,000/-.

13. The Tribunal has awarded a compensation of Rs.66,600/- towards medical expenses, which is supported by medical bills, which has been marked as Ex.A.7 series. The appellant has incurred further medical expenses of Rs.17,617/-, which is supported by medical bills, which has been marked as Ex.A.15 apart from the medical bills already produced before the Tribunal. In view of the above, this Court enhances the compensation towards medical expenses from Rs.66,600/- to Rs.84,217/-.



WEB COPY

14. The compensation awarded by the Tribunal is modified as under by enhancing from Rs.1,73,100/- (Rupees One Lakh Seventy three thousand one hundred only) to Rs.2,24,217/- (Rupees Two Lakhs Twenty Four thousand two hundred seventeen only).

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted
Permanent Disability	70,000/-	70,000/-	Confirmed
pain and sufferings	17,500/-	20,000/-	Enhanced
Nutrition	5,000/-	10,000/-	Enhanced
Transportation	2,000/-	10,000/-	Enhanced
Loss of income	5,000/-	10,000/-	Enhanced
Loss of amenities	5,000/-	10,000/-	Enhanced
Attender charges	2,000/-	10,000/-	Enhanced
Medical bills	66,600/-	84,217/- (Rs.66,600+ 17,617/-)	Enhanced
Total Compensation	1,73,100/-	2,24,217/-	Enhanced

15. Since the second respondent/Insurance Company has been exonerated from the liability, the amount of Rs.2,24,217/- (Rupees Two lakhs Twenty Four thousand two hundred seventeen only), awarded by this Court, is liable to be paid by the first respondent, who is the owner of the vehicle. Accordingly, the findings given by the Tribunal, exonerating the liability of the second respondent/Insurance Company is confirmed.

16. Accordingly, the civil miscellaneous appeal is partly allowed by enhancing the award amount from Rs.1,73,100/- to Rs.2,24,217/- (Rupees Two Lakhs Twenty Four thousand Two Hundred Seventeen only).

17. The first respondent is directed to deposit the compensation amount of Rs.2,24,217/- (Rupees Two Lakhs Twenty Four thousand Two Hundred Seventeen only), awarded by this Court, after deducting the amount already deposited if any, together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit and costs, to the credit of MCOP.No.627 of 2009 within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal shall transfer the amount lying to the



credit of MCOP.No.627 of 2001 to the bank account of the claimant through RTGS within a period of one week thereafter. No costs.

WEB COPY

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr/rgi

To

1.The Additional District Judge,
Fast Track Court No.IV,
The Motor Accidents Claims Tribunal,
Coimbatore at Tirupur.

2. The Section Officer,
V.R.Section, High Court,
Madras - 104.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No.47488

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.47441

C.M.A.No. 2950 of 2011

KK(CO)
GN(27/10/2021)