



C.M.A.No.1921 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.M.A.No.1921 of 2014**

A.Selvaraj

.. Appellant

Vs.

1.Charles Rico Lazaro

2.IFFCO Tokio General Insurance  
Company Limited

N.No.28, O.No.195, North Usman Road  
T.Nagar, Chennai-17.

.. Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2014 made in M.C.O.P.No.2416 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.



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For Appellant : Mr.K.Varadha Kamaraj  
For R2 : Mrs.K.Saraswathi  
for Mr.C.R.Krishnamurthy

### **J U D G M E N T**

The Civil Miscellaneous Appeal is filed challenging the portion of the award fixing 5% contributory negligence on the part of the appellant and for enhancement of compensation granted by the Tribunal in the award dated 31.01.2014 made in M.C.O.P.No.2416 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.2416 of 2011 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.04.2011.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent riding by



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the rider of motorcycle belonging to the 1<sup>st</sup> respondent as well as negligence of the appellant, fixed 95% negligence on the part of rider of the motorcycle and 5% contributory negligence on the part of appellant, awarded a sum of Rs.1,40,000/- as compensation to the appellant and directed the 2<sup>nd</sup> respondent/Insurance Company being insurer of the said motorcycle to pay a sum of Rs.1,33,000/- being 95% of the compensation to the appellant at the first instance and recover the same from the 1<sup>st</sup> respondent, owner of the motorcycle.

4.Challenging the portion of the award fixing 5% contributory negligence on the part of the appellant and not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present Civil Miscellaneous Appeal.

5.Though the learned counsel appearing for the appellant raised grounds with regard to negligence, at the time of arguments, he restricted his arguments only with regard to quantum of compensation awarded by the Tribunal and contended that at the time of accident, the appellant was



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working as Mason and was earning a sum of Rs.300/- per day. In the accident, the appellant suffered comminuted fracture proximal 1/3<sup>rd</sup> left tibia and fibula. To prove the nature of injuries, the appellant examined the Doctor as P.W.2 and marked disability certificate and X-ray as Exs.P6 and P7 respectively. The Tribunal has granted only a meagre sum of Rs.1,800/- per percentage of disability. The appellant could not continue his job as Mason due to the injuries and shortening of left leg. He finds it difficult to stand, walk, bend and squat on the floor. The appellant took treatment as in-patient in the hospital from 15.04.2011 to 16.05.2011 and underwent surgery. The Tribunal ought to have adopted multiplier method for awarding compensation towards loss of earning power. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and future medical expenses. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company contended that the appellant has not proved that he suffered functional disability or lost his earning capacity. In the



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absence of any evidence, the Tribunal rightly granted compensation by adopting percentage method. The appellant has not filed any document to prove his avocation and income. In the absence of documentary evidence, the notional income fixed by the Tribunal is not meagre. The total compensation awarded by the Tribunal under different heads are not meagre and prayed for dismissal of the appeal.

7.The 1<sup>st</sup> respondent remained exparte before the Tribunal and hence, notice to the 1<sup>st</sup> respondent is dispensed with.

8.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company and perused the entire materials on record.

9.It is the contention of the appellant that in the accident, he suffered communitated fracture proximal 1/3<sup>rd</sup> left tibia and fibula. To prove the nature of injuries, the appellant examined the Doctor as P.W.2 and marked disability certificate and X-ray as Exs.P6 and P7 respectively. P.W.2 Doctor examined the appellant and certified that appellant suffered 35% disability and issued



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Ex.P6 disability certificate. The Tribunal considering the same, fixed 35% disability and awarded a sum of Rs.63,000/- towards disability at the rate of Rs.1,800/- per percentage. The appellant has not let in any evidence to show that he suffered functional disability and lost his earning capacity due to the injuries. Hence, the appellant is not entitled to compensation by adopting multiplier method. But the amount granted by the Tribunal per percentage of disability is meagre. The accident is of the year 2011 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,05,000/- (35% X Rs.3,000/-).

9(i) The appellant in the claim petition has contended that he was working as Mason and was earning a sum of Rs.300/- per day. The appellant failed to prove the said contention. In the absence of any evidence with regard to avocation and income of the appellant, the Tribunal awarded a sum of Rs.20,000/- towards loss of earning. The accident is of the year 2011 and hence, a sum of Rs.8,000/- per month is fixed as notional income of the appellant. Due to the injuries, the appellant would not have attended his work



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atleast for a period of five months. Thus, the compensation awarded by the Tribunal towards loss of earning during treatment period is modified to Rs.40,000/- (Rs.8,000/- X 5).

9(ii) The appellant has taken treatment as in-patient in Government Kilpauk Medical College and Hospital, Chennai, from 15.04.2011 to 16.05.2011 and underwent surgery. The Tribunal has not granted any amount towards attendant charges, loss of amenities and damage to clothes. Considering the nature of injuries and period of treatment taken by the appellant, Rs.16,000/-, Rs.15,000/- and Rs.1,000/- are granted towards attendant charges, loss of amenities and damage to clothes respectively. A sum of Rs.10,000/- awarded by the Tribunal towards extra nourishment is meagre and hence, the same is hereby enhanced to Rs.15,000/-. The appellant has not produced any document to show that he requires future medical expenses and therefore, he is not entitled to any amount towards future medical expenses. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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| S.No | Description                             | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted or reduced                                            |
|------|-----------------------------------------|---------------------------------|-----------------------------------|----------------------------------------------------------------------------------------------|
| 1.   | Loss of earning during treatment period | 20,000                          | 40,000                            | Enhanced                                                                                     |
| 2.   | Transportation                          | 7,000                           | 7,000                             | Confirmed                                                                                    |
| 3.   | Extra nourishment                       | 10,000                          | 15,000                            | Enhanced                                                                                     |
| 4.   | Medical expenses                        | 10,000                          | 10,000                            | Confirmed                                                                                    |
| 5.   | Pain and suffering                      | 30,000                          | 30,000                            | Confirmed                                                                                    |
| 6.   | Disability                              | 63,000                          | 1,05,000                          | Enhanced                                                                                     |
| 7.   | Attendant Charges                       | -                               | 16,000                            | Granted                                                                                      |
| 8.   | Loss of amenities                       | -                               | 15,000                            | Granted                                                                                      |
| 9.   | Damage to clothes                       | -                               | 1,000                             | Granted                                                                                      |
|      | <b>Total</b>                            | <b>1,40,000</b>                 | <b>2,39,000</b>                   | <b>Enhanced by Rs.94,050/-</b><br><b>[Rs.2,27,050/-</b><br><b>-</b><br><b>Rs.1,33,000/-]</b> |
|      | <b>95% of the award amount</b>          | <b>1,33,000</b>                 | <b>2,27,050</b>                   |                                                                                              |

10.In the result, this Civil Miscellaneous Appeal is partly allowed and



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the compensation awarded by the Tribunal at Rs.1,40,000/- is hereby enhanced to Rs.2,39,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit a sum of Rs.2,27,050/- being 95% of 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 at the first instance and recover the same from the 1<sup>st</sup> respondent, owner of the vehicle. 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. No costs.

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Index : Yes / No  
Internet : Yes/ No  
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**V.M.VELUMANI,J.**



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To

1.IV Judge  
Motor Accident Claims Tribunal  
Small Causes Court, Chennai.

2.The Section Officer  
V.R.Section,  
High Court,  
Chennai.

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