



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

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**C.M.A. (MD)No.1597 of 2010**  
**and C.M.P. (MD)No.1637 of 2021**

Parthiban  
Rep. by his father  
Mohandoss

... Appellant/Petitioner

versus

1. S.Chandrasekar

2. The Divisional Manager,  
(Divisional Office No.1)  
M/s.National Insurance Co. Ltd.,  
3<sup>rd</sup> Floor, Unity Building Annex,  
72, Mission Road,  
Bangalore - 560 027.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 29.04.2010 made in M.C.O.P.No.1793 of 2006 on the file of the learned III Additional Sub Judge, Trichirappalli.

For Appellant : Mr.A.Saravanan  
For Respondent : No appearance for R1  
Mr.D.Sivaraman for R2

**JUDGMENT**

This is a case of injury. The claimant has come up with this appeal, seeking enhancement of compensation.

2. The facts in brief are that on 14.09.2005 at 8.30 p.m, the claimant was returning in a Honda Activa motor cycle bearing Reg.No.KA01U 3887 from his office to his residence situated at Lakshandra. While he was proceeding near R.V.Nagar Kaji Street Junction at about 9.15 p.m., a Tempo bearing Reg.No. K 05C 9392, which was coming behind the claimant, dashed against the Honda Activa, due to which, he sustained grievous injuries and fracture. Immediately, he was taken to Bangalore Hospital and he was discharged on 01.10.2005. Thereafter, he took treatment at Maruthi Hospital, Trichy as in-patient from 13.11.2005 to 14.12.2005. Subsequently, he was admitted at Kerala Ayurveda Hospital, Trichy, on 27.03.2006 and discharged on 03.04.2006 and thereafter, at MIOT Hospital, Chennai.

<https://hcservices.ecourts.gov.in/hcservices/>



3. The claimant would further state that he was 26 years old at the time of accident and was working as a Recruiter in Alt Jobs, Bangalore. He has successfully completed B.E (Computer Science) in Madurai Kamarajar University in the year 2001 and M.B.A., at Anna University, Chennai, in the year 2004. He was earning a sum of Rs.10,000/- per month. Alleging that the accident occurred due to the negligence of the driver of the Tempo, the owner of the vehicle and his insurer are jointly and severally liable to pay compensation.

4. The claim petition was contested by the respondent Insurance Company disputing the manner of accident and the liability. It is their specific case that the claimant himself was negligent and hence, no liability can be fixed on the insurer of the Tempo.

5. Before the Tribunal, on behalf of the claimant, four witnesses were examined and 37 documents were produced. The respondent Insurance Company has not let in any evidence either oral or documentary. After analysing the evidence adduced by the claimant, the Tribunal has come to the conclusion that the accident had occurred only due to the negligence of the driver of the Tempo. The said finding has become final as no appeal has been preferred by the respondent.

6. Insofar as the quantum is concerned, the claimant produced Ex.P29 to prove his educational qualification and Exs.P30 and P31 are the documents to show that he was appointed at Lader Consultancy Service Pvt. Ltd. and thereafter, he joined in Alt Jobs. Ex.P32-salary certificate shows that he was paid Rs.10,000/- p.m. P.W.3 and P.W.4-Doctors, Muralidharan and Ravi, deposed that the injured claimant has suffered 90% disability. The disability certificates are marked as Exs.P34 and 36. In their evidence, they have categorically stated that the injured claimant sustained head injury and his right side skull was removed, due to which, his left side body is not functioning. Though P.W.3 and P.W.4 have issued certificates Exs.P34 and 36 and stated that the claimant suffered 90% disability, the Tribunal has taken the disability at 68% and by applying the multiplier of 18, has awarded Rs.8,84,096/- towards loss of earning power. While calculating loss of income, the Tribunal has deducted 1/3<sup>rd</sup> amount towards his personal expenses. It is to be noted that in a case of injury, no deduction is permissible for personal expenses.

7. The evidence of P.W.1, P.W.3 and P.W.4 would reveal that the claimant has lost his total earning power and hence, the disability has to be taken as 100%. Thus, loss of income is assessed as Rs.20,40,000/- (Rs.10,000/- x 12 x 17). Considering the period of treatment and the injuries suffered by the claimant, the Tribunal has awarded Rs.1,50,000/- towards pain and sufferings and



Rs.2,00,000/- for loss of martial prospects. Based on Ex.P25-Medical Bills, a sum of Rs.8,55,272/- was awarded towards Medical Expenses.

8. The learned counsel appearing for the appellant would submit that the accident had occurred in the year 2005 and at the time of conclusion of the trial, the Medical records were produced to show that the claimant has spent Rs.8,52,000/- for medical expenses, however, subsequently, the claimant spent Rs.50,000/- per annum for medical expenses and another Rs.12,000/- is paid for attendant charges. In support of the said contention, the learned Counsel produced additional documents. The documents were provided by a reputed Hospital and they appear to be genuine and reliable.

9. The materials produced by the appellant shows that even after the Judgment of the Tribunal, the claimant spent amount for medical expenses and therefore, it would be appropriate to award a sum of Rs.4,50,000/- for future medical expenses.

10. The Tribunal has not awarded any amount for attendant charges. Therefore, this Court awards Rs.1,00,000/- for attendant charges. The amount under other heads are reasonable and therefore, they are confirmed. Accordingly, the amount awarded by the Tribunal is re-calculated and modified as under:-

|                           |   |                |
|---------------------------|---|----------------|
| Loss of income            | - | Rs.20,40,000/- |
| Pain and sufferings       | - | Rs. 1,50,000/- |
| Loss of marital prospects | - | Rs. 2,00,000/- |
| Medical Bills             | - | Rs. 8,55,272/- |
| Future medical expenses   | - | Rs. 4,50,000/- |
| Attendant charges         | - | Rs. 1,00,000/- |
| Transport charges         | - | Rs. 41,945/-   |
| Lodging expenses          | - | Rs. 47,125/-   |
| For Nutrition             | - | Rs. 25,000/-   |
| Total                     | - | Rs.39,09,342/- |
| Rounded off               | - | Rs.39,09,340/- |

11. In the result, this Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from Rs.25,03,440/- to a sum of Rs.39,09,340/-. The original award amount of the Tribunal shall carry interest at the rate of 7.5% per annum and the enhanced award amount shall be paid with interest at the rate of 6% p.a., from the date of admission of the appeal till the date of realization with proportionate costs. The Insurance Company shall deposit the enhanced award amount with interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit being made, the father of the claimant, namely, Mohandoss, is permitted to withdraw the same, by making necessary application



before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

To

1. The III Additional Subordinate Judge, Tiruchirapalli

Copy to

The Record Keeper, (2C)  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai

+1 CC to M/s.D.SIVARAMAN, Advocate ( SR-8075[F] dated 02/03/2021 )

+1 CC to M/s.A.SARAVANAN, Advocate ( SR-8521[F] dated 03/03/2021 )

C.M.A. (MD)No.1597 of 2010  
01.03.2021

MJ(CO)

KB(27.05.2021) 4P 6C