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C.M.A.No.1783 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM :

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**C.M.A.No.1783 of 2012**

K.Mani Kumar

... Appellant

Vs.

1.R.Balamurugan

2.The United India Insurance Co. Ltd.,  
Having their Branch Office at  
No.235, New Military Road,  
Avadi, Chennai 54.

... Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award passed by the Motor Accidents Claims Tribunal, Additional District & Sessions Judge, FTC-II, Poonamallee in M.C.O.P.No.50 of 2008, dated 01.03.2010.

For Appellant : Mr.J.Mahalingam  
for Ms.S.Ramya

For Respondents : Mr.V.Bharathidasan  
for Mr.S.Arun Kumar for R2  
R1-Experte Tribunal



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## **JUDGMENT**

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 01.03.2010 made in M.C.O.P.No.50 of 2008 passed by the Motor Accident Claims Tribunal / Additional District & Sessions Judge, FTC-II, Poonamallee.

2.The case in brief, is as follows:

On the fateful day, i.e., on 28.02.2005, at about 06.50 hours, the injured claimant/appellant was travelling in a Auto Rickshaw bearing Regn. No.TN-02-D-5987 from Alwarpet to Royapettah. At that time, the driver of the auto drove the same in a rash and negligent manner in a high speed and dashed against a Maruthi Van bearing Regn.No.TN-07-Y-5310 and thereby the appellant sustained grievous injury. The appellant/claimant filed a claim petition before the Tribunal claiming a sum of Rs.3,00,000/- for the injuries sustained by him in the accident. Considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.72,100/- with interest at the rate of 7.5% per annum from the date of petition.



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3.Challenging the same, the appellant-claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

4. The learned counsel for the appellant/claimant has submitted that the appellant was working as a Tea Shop Owner and was earning not less than Rs.300/- per day. He sustained fracture intertrochantric left femur, injuries over left hip, left foot, right foot and other serious multiple injuries all over the body. Immediately after the accident, the claimant was treated as in-patient in Government Royapettah Hospital from 28.02.2005 to 02.03.2005 and further treated as in-patient at Voluntary Health Services from 02.03.2005 to 23.03.2005. The Tribunal has failed to consider the evidences of PW1 and PW2 regarding the nature of injuries sustained by the appellant. The Doctor/PW2 who assessed the disability at 40%, marked Ex.P5 and Ex.P6 and deposed that the appellant sustained fracture of neck of femur. The fracture has been fixed with long plates and screws. The left hip movement is restricted by 30 degrees. He is still continuing his treatment as out-patient. He further submitted that the Tribunal has erred in awarding only a sum of Rs.72,100/- as against the claim of Rs.3,00,000/-.A perusal of Ex.P4- Disability certificate issued by the doctor, shows that the claimant had sustained fracture on his left leg. He assessed the



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disability at 40%. The Tribunal has concluded that the claimant may sue any one of the joint tortfeasor. It is also submitted that the amounts awarded towards other heads are meagre. Stating so, the learned counsel prayed for enhancement of compensation.

5. Per contra, the learned counsel for the second respondent/ Insurance Company has denied that the accident occurred due to the rash and negligent driving of the driver of the first respondent. Further it is stated that as per their investigation and as per FIR that on 28.02.2005, the car was driven by its driver in a rash and negligent manner, suddenly overtaking the vehicles on its wrong side and hit against the auto. The amount claimed by the appellant is very high. He further submitted that the Tribunal has rightly considered the materials and evidence available on record and has awarded the just, fair and reasonable compensation and hence the same does not require any interference at the hands of this Court.

6. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

7. The learned counsel for the appellant / claimant has questioned



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only the quantum of compensation awarded by the Tribunal. Hence this Court is not inclined to interfere with the finding of the Tribunal in respect of negligence and liability.

8. The details of compensation awarded by the Tribunal are as follows:

| <i><b>Sl.No.</b></i> | <i><b>Head</b></i>                          | <i><b>Amount .</b></i> |
|----------------------|---------------------------------------------|------------------------|
| 1.                   | Loss of Income                              | Rs. 3000/-             |
| 2.                   | Transport to Hospital                       | Rs. 2000/-             |
| 3.                   | Extra Nourishment                           | Rs. 3000/-             |
| 4.                   | Medical Expenditure                         | Rs. 19,118/-           |
| 5.                   | Pain & Sufferings                           | Rs. 5,000/-            |
| 6.                   | Loss of future amenities for his disability | Rs.40,000/-            |
|                      | Total                                       | Rs. <b>72,118/-</b>    |

Rounded off to **Rs.72,100/-**

9. The Tribunal has relied upon the exhibits, evidence of witnesses, treatment records, Disability Certificate and all other aspects in a proper perspective and has awarded the compensation under various heads to the appellant/claimant. Further, this Court is of the considered view that the amounts awarded towards various heads are reasonable and justifiable and



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hence the same are confirmed.

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**A.A.NAKKIRAN, J.**

gv

10. In the result, the Civil Miscellaneous Appeal is dismissed. No costs.

**15.12.2022**

Index :Yes/No

Internet:Yes/No

Speaking order/Non speaking order

gv

To

1. The Motor Accidents Claims Tribunal,  
Additional District & Sessions Judge,  
FTC-II, Poonamallee.
2. The Section Officer,  
High Court, Madras.

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