



CMA.No.2354 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.08.2022**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMA.No.2354 of 2021
and
C.M.P.No.13803 of 2021

Vaitheeswaran

... Appellant/ Petitioner

Vs

1. Devendhiran

2. Palanisamy

3. The National Insurance Co., Ltd,
8th Floor, Konnectus Tower, Tower-3,
Opp: New Delhi Railway Station,
Bhav Bhuti Marg, New Delhi - 110002.

4. The National Insurance Co., Ltd.,
Branch Office Mahalakshmi Nvasham,
Opp. Kiruba Hospital, Kumarasampatty,
Rajaji Road, Salem - 636007.

... Respondents / Respondents



CMA.No.2354 of 2021

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree in MCOP No.1000 of 2018, dated 10.02.2021 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.-I, Salem.

For Petitioner : Mr.T.S.Arthanareeswaran

For Respondents : Mr.D.Bhaskaran [R.3 & R.4]

: No appearance [R.1 & R.2]

JUDGEMENT

The claimant is the appellant before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal/Special Subordinate Judge No.-I, Salem in MCOP No.1000 of 2018. To appreciate the grievance of the petitioner it is necessary to briefly allude to the facts of the case and while doing so the parties are referred to in the same array as before the Tribunal.

2. The petitioner had filed the above claim petition seeking compensation for the injuries sustained by him in a road accident that occurred on 14.03.2018 at about 2 pm. It is his case that on the said date he was proceeding in his Hero Honda Splendor bike bearing Registration No.TN-01-X-5850 from Valasiyur to Harur main road, near Padankadu



Pirivu Road Bus Stop following all traffic rules and regulations, at that point of time the Motor Cycle belonging to the 2nd respondent and driven by the 1st respondent bearing Registration No.TN-54-D-2778 was coming in the opposite direction and was being driven in a rash and negligent manner had dashed against the petitioner as a result of which he had fallen down and sustained grievous injuries. It is his case that he is working as a supervisor in a Bakery and earning a monthly income of Rs.14,000/-.

3. The 1st respondent remained ex parte and it was only the 4th respondent who had contested the claim stating that the petitioner was negligent and that had caused the accident. They had denied the age, income and occupation of the petitioner. That apart, it was contended that the 1st respondent did not have the requisite driving licence to ride the motor cycle.

4. The Tribunal below held that the accident had occurred only on account of the negligence of the 1st respondent and therefore, held that the 1st, 2nd & 4th respondents were liable to compensate the petitioners.



WEB COPY

5. The Tribunal has arrived at a compensation of a sum of Rs.4,69,858/- together with interest at the rate of 7.5%. the Tribunal had awarded a sum of Rs.150,000/- towards disability calculating it on a percentage basis at the rate of Rs.5,000/- per percentage. Challenging the said award as being inadequate the petitioner is before this Court.

6. Heard both the counsels.

7. The petitioner had undergone the following injuries:-

- 1. Bone fracture on the thigh of his left leg.*
- 2. Crushing of bone on the knee of his left leg.*
- 3. Dislocation of jaw on his right cheek.*
- 4. Bone fracture on the right eyebrow.*

8. He was hospitalized on two occasions and had undergone an implant. The Medical Board had assessed his disability at 30%. Considering the above, the amounts under the head of pain and suffering has to be enhanced from Rs.40,000/- to Rs.50,000/- and further in order to prove his



monthly income the petitioner has marked Ex.P.17 to Ex.P.21. That apart, considering the injuries sustained he would have definitely not attended work for over 6 months. Therefore, the loss of earning for the period of 6 months is calculated at the rate of Rs.15,000/- per month and a sum of Rs.90,000/- is awarded for the said period. Therefore, the amount under this head is also enhanced. The petitioner has been an inpatient on two occasions and would have required the assistance of an attender, the Tribunal has awarded only a sum of Rs.15,000/- under this head is enhanced to a sum of Rs.25,000/-. There has been a shortening of left lower limb and the disability assessed as a permanent one, therefore, amount under the head of loss of amenities should be enhanced to a sum of Rs.50,000/ from Rs.30,000/-. The award is therefore modified to the aforesaid extent as tabulated herein below:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Pain and Sufferings	40,000/-	50,000/-	Enhanced
2.	Loss of earning during treatment	45,000/-	90,000/-	Enhanced
3.	Medical Expenses	1,58,858/-	1,58,858/-	Confirmed
4.	Conveyance Expenses	15,000/-	15,000/-	Confirmed



CMA.No.2354 of 2021

S.No	Description	Amount awarded Tribunal (Rs)	by	Amount awarded this Court (Rs)	by	Award confirmed or enhanced or granted or reduced
5.	Extra nourishment	15,000/-		15,000/-		Confirmed
6.	Attender chargers	15,000/-		25,000/-		Enhanced
7.	Damages	1,000/-		1,000/-		Confirmed
8.	Loss of amenities	30,000/-		50,000/-		Enhanced
9.	Disability	1,50,000/-		1,50,000/-		Confirmed
	TOTAL	4,69,858/-		5,54,858/-		enhanced by Rs.85,000/-

9. Therefore, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal be and hereby is enhanced to a sum of Rs.5,54,858/- from Rs.4,69,858/- together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respects the award of the Tribunal is confirmed. The 3rd respondent/insurance company is directed to deposit the said amount (Rs.5,54,858/-) to the credit of MCOP No.1000 of 2018 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.-I, Salem, together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from



CMA.No.2354 of 2021

the date of receipt of a copy of this Judgement. On such deposit being made, the petitioner is permitted to withdraw the award amount now determined by this Court along with interest and costs, after adjusting the amount if any already withdrawn. The claimant shall pay the Court fee for the enhanced amount, if payable. The Tribunal shall not disburse of the amount till such time as the certified copy showing proof of entire payment of Court fee has been produced. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.08.2022

Index : Yes/No
Internet: Yes/No
shr

To

1. The Motor Accident Claims Tribunal/
Special Subordinate Judge No.-I, Salem.
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



CMA.No.2354 of 2021

P.T. ASHA, J,

shr

CMA.No.2354 of 2021
and
C.M.P.No.13803 of 2021

23.08.2022



WEB COPY



CMA.No.2354 of 2021