



WEB COPY



C.M.A.No.2594 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2022

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2594 of 2014

Suresh

... Appellant

Vs.

1.G.Raja Bahadur
(R1 was set exparte before the Tribunal)

2.The Oriental Insurance Co. Ltd.,
No.115, Prakasam Salai
Chennai-600 002.

... Respondents

The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 09.07.2013 passed in MCOP.No.4548 of 2011 on the file of the IV Judge, Small Causes Court (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr. K.Vasanthamala
For Mr.UM.Ravichandran

For Respondents : R1 - Set Exparte
Mr.M.J.Vijayaraghavan for R2



C.M.A.No.2594 of 2014

J U D G M E N T

WEB COPY

The Civil Miscellaneous Appeal on hand is preferred against the judgment and decree dated 09.07.2013 passed in M.C.O.P.No.4548 of 2011 on the file of the Motor Accident Claims Tribunal/IV Judge, Small Causes Court, Chennai.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,72,500/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of earning	15,000/-
Transport to Hospital	7,000/-



WEB COPY



C.M.A.No.2594 of 2014

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Extra Nourishment	10,000/-
Pain and suffering	25,000/-
Disability of 45% at Rs.2000/- per percentage	90,000/-
Total	1,47,000/-
90% of the award amount (i.e Rs.1,47,000)	1,32,300/-
+Medical Expenses	40,200/-
Total	1,72,500/-

4. The Appellant/claimant has sustained on 22.08.2011 subarachnoid hemorrhage right fronto parietal region and other multiple injuries all over his body, as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained by him. The Motor Accident Claims Tribunal had directed the respondents to pay the Appellant/claimant, the aforesaid compensation.



5. Before the Tribunal, the Appellant/claimant has filed 24 documents which were marked as Ex.P1 to Ex.P24 and examined five witnesses as PW.1 to PW.5. On the side of the respondents, one witness was examined as RW.1 and Ex.R1 was marked before the Tribunal. The 1st respondent was set exparte.

6. The learned counsel appearing on behalf of the Appellant/claimant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is inadequate and not in commensuration with the gravity of the injuries suffered by the claimant. It is contended that the claimant suffered grievous injuries and the doctor assessed the disability at 75%, however the Tribunal has reduced the same to 45%. The claimant was a Call Driver and aged about 25 years and he was not in a position to perform his work, after the accident. Therefore, there is a loss of income permanently and the compensation granted by the Tribunal is to be enhanced.



7. The accident occurred on 22.08.2011 at about 21.00 hours, at Mugalivakkam Main Road from east to west. The Poonamallee Traffic Investigation police station registered a case in Crime No.1583 of 2011 under Sections 279 and 338 IPC. Due to the accident, the claimant sustained grievous injuries. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the driver of the Mini Lorry bearing Registration No.TN 04 A 7220 had driven the vehicle in a rash and negligent manner and caused the accident. But, the Tribunal has committed grave error in fixing the contributory negligence on the petitioner at 10%.

8. With regard to the quantum of compensation, the Tribunal has awarded a total compensation of Rs.1,72,500/-. In this regard, it is contended that the loss of earning awarded by the Tribunal is very meagre. This apart, he sustained grievous injuries and the disability caused permanent loss of income. Further, the disability compensation was granted



C.M.A.No.2594 of 2014

by fixing a sum of Rs.2,000/- for one percentage and the same is to be enhanced.

9. The learned counsel appearing on behalf of the second respondent/Insurance Company refuted the contention raised by the appellant by stating that the appellant/claimant has not suffered any grievous injury or permanent disablement or loss of earning capacity and he had not taken treatment continuously in view of the fact that the injuries are not so grave. Therefore, the Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

10. This Court is of the considered opinion that the appellant/claimant was aged about 25 years at the time of the accident. The doctor assessed the disability at 75%. However, the Tribunal has rightly reduced the same and has assessed the disability at 45%, after considering the multiple injuries sustained by the petitioner. Due to the accident, he was

6/11



unable to perform his routine duties in a normal manner. He had taken treatment at Sri Ramchandra Medical Centre, Chennai as seen from the exhibit P12 discharge summary. The appellant/claimant being a Call Driver, undoubtedly the injuries would have caused the disability, loss of income and he would be incapacitated to some extent from performing his normal duties. This apart, the accident occurred in the year 2011. Thus, fixing a sum of Rs.2,000/- for 1% disability is inadequate. Therefore, this Court is inclined to enhance the disability compensation by fixing a sum of Rs.3000/- for 1%. Insofar as the compensation awarded by the Tribunal towards "Transport to Hospital" during the period of treatment at Rs.7,000/- is concerned, the same is low in the considered view of this Court. Hence, the compensation awarded under the head "Transport to Hospital" is enhanced to Rs.10,000/- instead of Rs.7,000/-.

11. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.



12. As far as the negligence is concerned, this Court is of the considered opinion that since the violation of road traffic rules by the petitioner vehicle is also the cause for the accident, the Tribunal has rightly fixed the contributory negligence on the part of the petitioner at 10%.

13. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,72,500/- to Rs.2,15,700/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Loss of Earning	15,000/-	15,000/-
Transport to Hospital	7,000/-	10,000/-
Extra Nourishment	10,000/-	10,000/-
Pain and Suffering	25,000/-	25,000/-
Disability at 45%	90,000/- (Rs.2000/- per percentage)	1,35,000/- (Rs.3000/- per percentage)
Total	1,47,000/-	1,95,000/-
90% Award amount	1,32,300/-	1,75,500/-



<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
+ Medical Expenses	40,200/-	40,200/-
Total	1,72,500/-	2,15,700/-

Conclusion:

14. (i) In the result, this appeal is partly allowed.

(ii) The Award of the Tribunal is modified enhancing the compensation amount from Rs.1,72,500/- to Rs.2,15,700/-. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 7.5% per annum.

(iii) The second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.2,15,700/- along with interest and costs, after deducting the amount already deposited, if any, to the credit of MACTOP.No.4548 of 2011 within a period of four weeks from the date of receipt of a copy of this judgement.

(iv) On such deposit being made, the Tribunal is directed to



WEB COPY



C.M.A.No.2594 of 2014

transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

19.12.2022
(2/2)

Index : Yes/No
Speaking Order/Non-Speaking Order
uma

To

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

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

A.A.NAKKIRAN, J.

10/11



WEB COPY



C.M.A.No.2594 of 2014

uma

C.M.A.No.2594 of 2014
(2/2)

19.12.2022