



C.M.A.No.803 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

C O R A M

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

C.M.A.No.803 of 2017

Durai

... Appellant

-Vs.-

1.M/s.Melmaruvathur Adiparasakthi Institute
of Medical Science and Research,
Represented by its Trustee,
Melmaruvathur and Post,
Kancheepuram Taluk,
Kancheepuram District - 603 319.

2.The United India Insurance Co.Ltd.,
No.28, Mailam Road,
Meenakshi Complex,
Tindivanam - 604 001,
D.O.134, Greams Road,
Chennai - 600 006

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 16.07.2014 made in M.A.C.T.O.P.No.636 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Judge II, Chennai.



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C.M.A.No.803 of 2017

For Appellant : Ms.A.Subadra
For Respondent-1 : Served-No Appearance
For Respondent-2 : Mr.L.Ramanathan

J U D G M E N T

The claimant has filed this appeal seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court No.II, Chennai.

2. The facts in brief are as follows:-

The appellant, who is employed as a mason, aged about 40 years old, met with an accident on 29.03.2010, involving the first respondent's Bolero Jeep, which is insured with the second respondent-Insurance Company. The appellant's case is that on the said date, at about 11.00 hours, he was riding his TVS-50 two wheeler and coming from Chengalpet by-pass road, in a north to south direction, the Jeep belonging to the first respondent travelling in the same direction at an uncontrollable speed rashly and negligently had dashed the appellant, as a result of which, he had sustained multiple injuries all over his body. Therefore, he claimed a sum of Rs.20,00,000/- as compensation.



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3. The first respondent had filed a counter, *inter alia* contending that there was no negligence on the part of the driver of the Bolero Jeep and it was only the appellant, who had driving his two wheeler in a rash and negligent manner and turned suddenly to the right without giving any indication. The driver of the first respondent's Bolero Jeep immediately had attended to the appellant and taken him to the hospital. The appellant alone was responsible for the accident. They had therefore prayed for dismissal of the petition.

4. The second respondent-Insurance Company filed a counter, *inter-alia* placing the onus on the appellant to prove the accident as well as the fact that the first respondent's Bolero Jeep was having a valid policy coverage and that the driver was in possession of a valid driving licence.

5. The Tribunal, after considering the evidence on record, held negligence on the driver of the Bolero Jeep. The Tribunal below after considering Exs.P2 Series, which are the four discharge summaries issued to the appellant, held that in one of the discharge summaries the injury was stated to be on the right leg whereas in all other discharge summaries the injury was stated to be both on the left leg. The Tribunal has extracted the details of the



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injuries sustained by the appellant in all the discharge summaries and also considered Ex.P6-Disability Certificate, which was marked and the evidence of P.W2-Doctor, who ultimately assessed the disability that has been suffered by the appellant on account of the injuries at 70% partial and permanent. The Tribunal had further held that the appellant, who claims to be a mason, had not produced any documentary evidence to prove the same. The Tribunal did not rely upon the evidence of P.W3, who was examined to prove that the appellant was a mason by profession. A notional income of Rs.6,500/- was taken and the Tribunal had adopted the percentage basis to arrive at a compensation for the permanent disability at Rs.2,10,000/-. On the whole, a total compensation of a sum of Rs.5,60,000/- has been awarded.

6. Challenging the same, the appellant has filed the above civil miscellaneous appeal.

7. Heard the learned counsel on either side and perused the materials available on record.



8. The Tribunal has arrived at a conclusion that the injuries sustained by the appellant are partial and permanent, which does not affect his future prospects and therefore, calculated compensation under this head on percentage basis. A perusal of Exs.P2, 3 ,4 and 5, particularly Ex.P4, photographs would clearly show that the appellant has sustained very grievous injuries to his right leg and the chances of him resuming any heavy work leave alone his work as a mason is rather remote. The Tribunal sought to down play the evidence given by P.W2 on the ground that he is neither an Orthopaedic surgeon nor a Neuro Surgeon and not a Doctor who had given the initial treatment. However, a perusal of evidence of P.W2 alongside the disability certificate-Ex.P6 would show that the Doctor has considered the injuries not only on the basis of the earlier medical records, but also on the basis of X-Ray, which was taken by him. The examination has been done three years after the accident and P.W2 subscribed the disabilities sustained by the appellant as follows:

i) Malunited # left tibia and fibula IM Nail in tibia.

Fibrosis muscles loss + muscles power 3/5. 80° knee flexion, Ankle movements NIL. Difficulty to squat and limping + left foot everted-For this 45%.



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C.M.A.No.803 of 2017

ii) *Malunited# right tibia fibrosis + flexion 80°
knee. Difficulty to squat + walk faster. For this 10%.*

iii) *Malunited # left humerus U/3 abduction
80°. IR ER left arm 50° limited. Difficulty to work and
carry weights-For this 20%.*

iv) *Malunited # left sacrum left ilium left pubic
rami right superior pubic rami. For this 20%.*

He has assessed the disability at 95%.

9. A perusal of the oral evidence of the Doctor would indicate that the grievous injuries are to the left foot, where P.W2 has found that the ankle movements are NIL and the appellant has been experiencing difficulty to squat or limp and walk faster and his oral evidence is also on the above lines. Therefore, it is clear that the injuries sustained on the left foot in the accident by the appellant are definitely resulted in his future prospects being drastically affected. The Court has to take into account the avocation that was being carried on by the appellant prior to the accident. Though the Tribunal has chosen to disbelieve P.W3 and fixed a notional income of Rs.6,500/-, the same appears to be reasonable. However, since the injuries sustained by the



C.M.A.No.803 of 2017

appellant are partial and permanent and it has affected his future prospects, compensation has to be awarded adopting the multiplier method. However, the disability assessed by the Tribunal is reduced to 55% taking into account the fact that apart from doing heavy work and difficult daily chores the appellant is able to do things on his own. The appellant is aged about 45 years as per the medical records. Therefore, the multiplier of 14 has to be adopted. The compensation that is payable to the appellant would be $\text{Rs.}6,500 \times 12 \times 14 \times 55\% = \text{Rs.}6,00,600/-$ under the head of "Disability". In all other respects, the award is in order. The enhanced award is as follows:-

<i>Heads</i>	<i>Amount by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Disability	2,10,000	6,00,600
Pain and Sufferings	1,00,000	1,00,000
Loss of income for 6 months	40,000	40,000
Transportation Charges	25,000	25,000
Extra Nourishment	20,000	20,000
Cost of Attender	20,000	20,000
Loss of future prospects	60,000	60,000
Loss of Amenities	35,000	35,000
Future of Medical expenses	50,000	50,000
Total	5,60,000	9,50,600



C.M.A.No.803 of 2017

10. The appeal is partly allowed and the impugned Award of the Tribunal is modified, enhancing the compensation amount from Rs.5,60,000 to **Rs.9,50,600.** The second respondent-Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.636 of 2011 along with interest at the rate of 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 the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

21.06.2022

Index:Yes/No
Speaking Order : Yes/No
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C.M.A.No.803 of 2017

To

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1. The Special Sub Judge II, (Motor Accident Claims Tribunal), Chennai
2. The Section Officer, V.R.Section, High Court of Madras, Chennai.



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C.M.A.No.803 of 2017

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C.M.A.No.803 of 2017

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