



WEB COPY



C.M.A.No.2227 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A.No.2227 of 2019

D.Ramkumar

... Appellant

vs.

1.M.M.S.Roadlines,
No.44, Bajanaikoil Street,
Pudupalayam & Post,
Gobichettipalayam Taluk,
Erode District.
(R1 set ex-parte before the tribunal,
Hence notice may be dispensed with)

2.Reliance General Insurance Co. Ltd.,
Kirusti Mahal, Second Floor,
New No.41, Eighth Street,
Tatabath, Coimbatore-641 012.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Order and Decreetal order in M.C.O.P.No.288 of 2011 dated 21.01.2013 on the file of the Motor Accident Claims Tribunal / Sub-Ordinate Judge, Sathyamangalam.

For Appellant	: Mr.S.Kamadevan
For Respondents	: Mr.E.Rajadurai
	for M/s.M.B.Gopalan Associates [R2]
	R1 – Ex-parte



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JUDGMENT

WEB COPY The petitioner before the Tribunal has filed this appeal seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Sub-Ordinate Judge, Sathyamangalam in M.C.O.P.No.288 of 2011.

2. The brief facts are as follows:

The appellant herein had filed the above claim petition seeking compensation of a sum of Rs.10,00,000/- for the injuries sustained by him in a road accident on 04.05.2011. It is the contention of the appellant that on the said date at about 0.30 hrs., the appellant was travelling in a Tata Indica Vista Car bearing Reg.No.TN-36-M-6868. The car was driven by one Sakthivel and the appellant was travelling in the car along with Chinnasamy, Gopal @ Marimuthu from Bangalore to Gobichettipalayam. When the vehicle had reached Gobichettipalayam-Adhani main road, near Thottipalayam junction, the driver of the Car drove the same in a rash and negligent manner, as a result of which, he lost control of the vehicle and that the car hit the tree on the right side. The driver lost his life on the spot and the appellant and the others had sustained grievous injuries and they



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were admitted at Gobichettipalayam Government Hospital. Chinnasamy was declared dead on arrival at the hospital and the appellant and the other passenger Gopal @ Marimuthu were given first aid treatment and thereafter, the appellant was admitted to the Ganga Medical Centre & Hospital (P) Ltd., Coimbatore. The appellant would submit that he is 50 years of age, working as sales representative in Maruthi Bus body building Coach and earning a monthly income of Rs.30,000/-. By reason of the accident, he had sustained a closed Tibia fracture in his left leg, closed both bones segmental fracture in right leg.

3. The 1st respondent / owner of the vehicle remained exparte and it was the 2nd respondent/Insurance Corporation which had contested the claim petition. The 2nd respondent/Insurance Company had put the appellant to strict proof of the contention in the claim statement which includes his age, income and occupation. The 2nd respondent had also raised the doubt as to whether the vehicle had a proper insurance cover, fitness certificate and the driver of the vehicle had a valid driving licence at the time of accident.

4. The Tribunal below had considered the evidence both oral and documentary and held that the accident had occurred only on account of the



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negligence on the part of the deceased driver of the car. Thereafter, taking into account the injuries sustained by the appellant and its nature, the Tribunal had awarded a sum of Rs.3,63,425/- as compensation.

5. Since the appellant's injuries has not caused any loss of earning or impairment in his functioning, the Tribunal has calculated the compensation for disability by adopting the percentage method. Aggrieved by the award passed by the Tribunal below, the appellant is before this Court seeking enhancement.

6. The learned counsel appearing on behalf of the appellant would submit that despite the injuries sustained and the disability assessed by the doctor who was examined as PW2, the Tribunal had granted compensation only by percentage method, whereas, the Tribunal ought to have granted the compensation by adopting multiplier method. That apart, the Tribunal has only taken a sum of Rs.4,500/- to be the salary of the appellant despite he producing Ex.P10-Salary Certificate, wherein, his employer has given certificate that he was earning a salary of Rs.12,500/- p.m.

7. The learned counsel for the 2nd respondent/Insurance Company on



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the other hand would submit that the Tribunal has taken into account all the relevant factors and passed a reasonable award which does not require any modification.

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

9. The accident had taken place in the year 2011. The appellant has marked Ex.P10 Salary Certificate and the same has not been seriously objected by the 2nd respondent/Insurance Company. The Tribunal has only taken a sum of Rs.2,000/- per percentage to calculate the compensation for disability, the same can be enhanced to Rs.3,000/- per percentage, taking into account the year and nature of injuries. Therefore, the amount under the head of disability @ 30% would be Rs.90,000/-. Further, the appellant has produced Ex.P10 Salary Certificate to show his salary, no doubt the same has been marked through the witness himself and could be construed as the document created for the purpose of the case. However, the appellant would atleast have earned a minimum of Rs.6,000/- p.m. Therefore, the amount under the head of loss of earning for six months would be



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Rs.36,000/- (Rs.6000/- X 6). In all other aspects, the award of the Tribunal appears to be very reasonable and I see no reason to interfere with the same.

Therefore, the Compensation awarded by the Tribunal is reworked as below:

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Pain and Sufferings	Rs. 45,000/-	Rs. 45,000/-	Confirmed
2	Attender Charges	Rs. 18,000/-	Rs. 18,000/-	Confirmed
3	Extra Nourishment	Rs. 9,000/-	Rs. 9,000/-	Confirmed
4	Transportation	Rs. 2,000/-	Rs. 2,000/-	Confirmed
5	Medical Expenses	Rs. 2,02,425/-	Rs. 2,02,425/-	Confirmed
6	Loss of income for six months	Rs. 27,000/-	Rs. 36,000/-	Enhanced
7	Permanent disability @ 30%	Rs. 60,000/-	Rs. 90,000/-	Enhanced
	TOTAL	Rs. 3,63,425/-	Rs.4,02,425/-	

5. In the result, this Civil Miscellaneous Appeal is allowed and the compensation of Rs.3,63,425/- awarded by the Tribunal is hereby Enhanced to a sum of **Rs.4,02,425/-**. Therefore, the 2nd respondent / Insurance



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Company is directed to deposit the enhanced amount of **Rs.4,02,425/-** to

the credit of M.C.O.P.No.288 of 2011 on the file of the Motor Accident

Claims Tribunal, Sub-Ordinate Judge, Sathyamangalam, together with

interest @ 7.5% per annum from the date of claim petition till the date of

deposit and costs, less, the amount, if any already deposited, within a period

of four weeks from the date of receipt of a copy of this Judgement. On such

deposit being made, the claimant is permitted to withdraw the amount now

determined by this Court, as apportioned by the Tribunal, along with

interest and costs, after adjusting 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 claimant. No costs.

12.10.2022

Index : Yes/No

Speaking / Non-speaking order

ssn

P.T.ASHA, J.,



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To:

1. The Motor Accident Claims Tribunal,
Sub-Ordinate Judge,
Sathyamangalam.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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