



C.M.A.No.1911 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.03.2022**

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.1911 of 2019

M.Manivannan

...Appellant/Claimant

Vs

1.S.Babu

2.Sriram General Insurance Co.Ltd,
Branch Manager,
421016-V- CTV Main Road,
Sathy Road, Erode – 638003.

... Respondents/ Respondents.

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to against the Judgment and Decree dated 10.01.2017 in M.C.O.P.No.1695 of 2014 passed by the learned Motor Accident Claims Tribunal/Special Sub Judge, Dharmapuri.

For Petitioner : Mr.A.Ilaya Perumal

For Respondents : Mr.S.Dhaksinamoorthy[R2]
No Appearance [R1]

JUDGEMENT



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Seeking the enhancement of the award the claimant has filed the above appeal. The 1st respondent though served has not entered appearance, the 2nd respondent is represented by the counsel. The brief facts preceding the filing of the above appeal are as follows:-

2. The appellant/claimant had filed M.C.O.P.No.1695 of 2014 on the file of the Motor Accident Claims Tribunal (Special Sub Judge, Dharmapuri) claiming compensation for the injuries sustained by him in a road traffic accident on 20.08.2012. It is the case of the claimant that he is employed as a sales executive at Arthi Agency and his age is about 29 years. While he was riding his motor cycle bearing Registration No.TN-29-B-3122 from Thirupathur Housing Board to Uthangarai along with one Yogaraj as a Pillion rider, the Omni Van bearing Registration No.TN-29-AX-1207 belonging to the 1st respondent and insured with the 2nd respondent came in a rash and negligent manner from the



opposite direction and dashed against the claimant and the pillion rider, thereby causing injuries. In the claim petition, he would submit that he has suffered the following injuries :-

- 1.Fracture Right Scapula.*
- 2.Fracture Right Clavicle*
- 3.Fracture Right 2nd to 9th Ribs with Right Haemothorax.*
- 4.Fracture of Right Distal Radius and Ulna.*
- 5.Fracture left Anterior Public Ramus.*
- 6.Supracondylar Fracture of Right Femur.*
- 7.Fracture Right Fibula.*
- 8.Fracture Medial Malleolus Left Ankle.*
- 9.Fracture 2nd and 5th Metacarpel Bones Right Hand.*
- 10.Fracture of Right Elbow.*

3. According to the claimant, he had suffered a permanent disablement on account of the accident. The accident was absolutely on account of the rash and negligent driving of the 1st respondent's vehicle and therefore, the respondents are liable to be compensated. The 2nd respondent was liable on account of the fact that the 1st respondent's vehicle was insured with them.

4. The 1st respondent remained ex parte and it was



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only the 2nd respondent who had filed the counter seeking leave to contest on all grounds available under Section 170 of the Motor Vehicle Act. The following objections were raised in the counter.

i. The accident was not the result of the driver of the 1st respondent's Omni Van.

ii. The claimant was also responsible for the accident.

iii. The Omni Van was not insured with the respondent at the time of the accident and did not possess the requisite permits etc.

iv. The petitioner had no driving license and therefore, the 2nd respondent was not liable to indemnify the 1st respondent.

5. The Motor Accident Claims Tribunal, Dharmapuri by its award dated 10.01.2017 had awarded a sum of



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Rs.29,75,600/- after holding that the driver of the Omni van was responsible for the accident. The Tribunal below had directed the amounts to be paid by the 2nd respondent as the insurer of the 1st respondent.

6. Aggrieved by the fact that the amount of compensation was low and that the Tribunal below had not taken into account the future medical expenses the claimant seeks to modify the award. The claimant would submit that the Tribunal has ignored the evidence of P.W.3 and Ex.P.4, while arriving at a notional income of RS.7,500/-. The learned counsel would further submit that the Tribunal has ignored the fact that the future prospect of the claimant has been severely impeded on account of the injuries sustained by him which is of a permanent nature. The disability certificate issued by the hospital which had given him treatment would clearly show that the disability (Exs.P.11, P.12, and P.13) would clearly show the extent of the injuries



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sustained by him as well as the impact. He would further submit that the amounts under the head of pain and suffering was also on the lower side.

7. The claimant is a sales executive and P.W.3 who has been examined has confirmed the said fact. The salary certificate has also been marked through the witness. The counsel would argue that no amounts have been added for future prospects. He would rely on the Judgement of this Court reported in **2015 (1) TN MAC 310 - Managing Director, Metropolitan Transport Corporation Ltd., Vs. Kanna @ Gokula Kannan**, wherein the Court had added 50% towards future prospects, adopting the judgement of the Hon'ble Supreme Court in Sarla Verma case reported in **2009 (2) TN MAC 1 (SC) - Sarla Verma & ors. Vs. Delhi Transport Corporation & another.**

8. Heard the learned counsel.



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9. A perusal of Exhibits particularly the disability certificate would show that the movement of the claimant has been constricted to a very great extent. In fact, the Doctor who had been examined as P.W.4 has opined that the disability is nearly 100%. Considering the age of the claimant, therefore 40% should be added towards the future prospects. Therefore, the monthly income of the claimant would be Rs.7,500/- + 40% = Rs.10,500/- x 90% disability X 17 X 12 = 19,27,800/-, in all other respects the award of the Tribunal is remained unaltered. Therefore, the revised working is as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Permanent disability	13,77,000/-	19,27,800/-	Enhanced
2.	Pain and Sufferings	1,00,000/-	1,00,000/-	Confirmed
3.	Loss of amenities	50,000/-	50,000/-	Confirmed
4.	Transport expenses	47,400/-	47,400/-	Confirmed



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
5.	Medical Expenses (Including Bills)	13,01,200/-	13,01,200/-	Confirmed
6.	Attender Charges	40,000/-	40,000/-	Confirmed
7.	Extra Nourishment	30,000/-	30,000/-	Confirmed
8.	Future Medical Expenses	30,000/-	30,000/-	Confirmed
	TOTAL	29,75,600/-	35,26,400/-	Enhanced by Rs.5,50,800/-

9. Therefore, the Civil Miscellaneous Appeal is partly allowed and the compensation of Rs.**29,75,600/-** awarded by the Tribunal is hereby enhanced to a sum of Rs.**35,26,400/-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other respect the award of the Tribunal is confirmed. The Insurance Company is directed to deposit the said amount (Rs.**35,26,400/-**) to the credit of M.C.O.P.No.1695 of 2014 together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by



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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 Judgement. On such deposit being made, the appellant is permitted to withdraw the amounts deposited, along with interest and costs, after adjusting the amount if any already withdrawn. The claimant shall pay the Court Fee for the enhanced amount within a period of two weeks from the date of receipt of a copy of this Judgement. The Tribunal shall not disburse the amounts until proof of payment of the Court fee is produced by the claimant failing which the Tribunal shall get a confirmation from this Court that the Court fee has been paid. No costs.

08.03.2022

Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking
shr

P.T. ASHA, J,

shr

To
1.Motor Accidents Claims Tribunal/ Special Sub Judge,



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Dharmapuri.

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

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