



C.M.A.No.410 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.410 of 2021

V.Karankumar

... Appellant/Petitioner

Vs.

1.D.Shankar

(since the 1st respondent remained *exparte* before
the Tribunal his present may be dispensed with)

2.The New India Assurance Company Limited,

No.46, Moore Street,

5th Floor, Chennai – 600 001.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 23.07.2018 made in M.A.C.T.O.P.No.639 of 2016 on the file of Motor Accident Claims Tribunal, (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai.

For Appellant : Ms.M.Sunithi Abirami

For Respondents : *Exparte* [R1]

M/s.C.Sangamithirai [R2]



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JUDGEMENT

The claimant is before this Court seeking an enhancement of the award passed by the Motor Accident Claims Tribunal, (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court, Chennai in M.C.O.P.No.639 of 2016, dated 23.07.2018.

2. On 01.01.2016 at about 22.50 hours, when the petitioner was travelling in a swift dzire car bearing Reg.No.TN 15 9299 from Villupuram to Chennai, near Kancheepuram Railway Bridge on Chengalpet Bay pass road, the above car driver had driven the car in a dangerous speed with rash and negligent manner and dashed the road center mediator. As a result of which, the petitioner sustained multiple grievous injuries. The first respondent is the owner of the vehicle and the second respondent is the insurer of the vehicle. The petitioner had filed a petition claiming a total compensation of a sum of Rs.15,00,000/- under various heads.



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3. Before the Tribunal, the petitioner had examined himself as P.W.1 and examined the doctor as P.W.2 and marked two documents viz., Ex.P1 and Ex.P.2. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.2,09,000/- with an interest of 7.5% p.a. Aggrieved by the same, the claimant had filed the present appeal for enhancement.

4. The learned counsel appearing for the appellant submitted when the Tribunal has accepted that the car was driven in a rash and negligent manner and was the cause for the accident, the compensation awarded by the Tribunal towards permanent disability by adopting a sum of Rs.3,000/- per percentage of disability is wholly inadequate. Further, the amount awarded under the heads of pain and sufferings, transport expenses, extra nourishment, damages, medical expenses, future medical expenses and attender charges are also minimal, which requires enhancement.



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5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, except the discharge summary, no medical records were marked before the Tribunal. However, P.W.2 doctor assessed the disability of the appellant at 30%, for which, without any materials, the Tribunal had awarded a sum of Rs.90,000/- under the head of disability, which is highly excessive and the other heads awarded by the Tribunal is also without any materials, which is also excessive. Hence, he submitted that the award of the Tribunal itself is questionable one. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

7. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. Admittedly, the appellant/claimant is the occupant of the car which was owned by the first respondent and insured



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with the second respondent. A bare perusal of the award reveals that the policy was not marked before the Tribunal in order to ascertain whether it is a Act only Policy or package policy and it is also evident that the P.W.2 doctor had not issued any disability certificate with regard to the disability sustained by the claimant. In the absence of insurance policy and disability certificate, the Tribunal had awarded compensation in favour of the claimant based on the discharge summary and had fastened the liability as against the second respondent, which is not sustainable. A perusal of the discharge summary, reveals that the claimant has sustained only lacerated injury, for which, the compensation awarded by the Tribunal is highly excessive. However, considering the fact that the present appeal has been preferred by the claimant and not by the second respondent/Insurance Company, this Court is not inclined to interfere with the compensation awarded by the Tribunal.

8. Accordingly, the Civil Miscellaneous Appeal is dismissed and the judgment and decree dated 23.07.2018 made in M.A.C.T.O.P.No.639 of 2016 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.2, Motor Accidents Claims Petitions) Small Causes Court,



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Chennai is confirmed. No costs.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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- To
- 1.The Motor Accident Claims Tribunal,
(Special Sub Court No.2, Motor Accidents Claims Petitions)
Small Causes Court,
Chennai.
 - 2.The Section Officer,
V.R.Section,
High Court, Madras.



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M.DHANDAPANI, J.,

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