



C.M.A.No.3046 of 2010

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2023

CORAM :

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

C.M.A.No.3046 of 2010

K.Gajendran

... Appellant/Petitioner

Vs.

1.R.Subramanian

2.The Branch Manager,
The New India Assurance Company Ltd.,
F-46, First Main Road,
Anna Nagar East,
Chennai – 102.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree dated 06.07.2010 in M.C.O.P.No.1692 of 2006 passed by the Motor Accident Claims Tribunal, (VI Small Causes Court), Chennai.

For Appellant : Mr.L.P.Shanmugasundaram

For Respondents : Notice dispensed with vide
order dt. 24.08.2023 [R1]
Mr.J.Chandran [R2]



C.M.A.No.3046 of 2010

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JUDGMENT

The claimant is before this Court seeking an enhancement of the award passed by the Motor Accidents Claims Tribunal, (VI Small Causes Court), Chennai in M.C.O.P.No.1692 of 2006 dated 06.07.2010.

2. It is the case of the appellant that, on 02.04.2006 at about 11.15 hours, the petitioner and two other students in a rash and negligent manner driven the Hero Honda Splender Plus bearing Reg.No.TN 01 X 7204 at Medavakkam Tank Road, ESI Hospital near Sakthi Oil Street and due to which, the petitioner sustained grievous injuries. The first respondent is the owner-cum-rider of the vehicle and the second respondent is the insurer of the vehicle. Thereafter, the petitioner had filed a claim petition claiming a total compensation of a sum of Rs.3,00,000/- under various heads.

3. Before the Tribunal, the petitioner examined himself as P.W.1 and examined the doctor as P.W.2 and marked 14 documents viz., Ex.P.1 to Ex.P.14. On the side of the respondents, they have examined one witness viz., R.W.1 and marked 5 documents viz., Ex.R.1 to Ex.R.5.



C.M.A.No.3046 of 2010

WEB COPY

After adjudication, the Tribunal awarded a sum of Rs.1,35,650/- with an interest of 7.5% p.a. by ordering pay and recovery. Not satisfied with the same, the claimant is before this Court.

4. The learned counsel appearing for the appellant submitted when the Tribunal has accepted that, due to the rash and negligent driving of the rider of the motorcycle i.e., the first respondent, the accident had happened, the compensation awarded by the Tribunal towards disability by adopting a sum of Rs.2,000/- per percentage of disability is wholly inadequate. Further, the amount awarded under the head loss of income for four months at the rate of Rs.3,000/- per month is also minimal, even though the appellant has earned a sum of Rs.5,000/- per month, which requires enhancement. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that, at the relevant point of time, as per the decision of the Apex Court as well as this Court, the Tribunal had rightly fixed the amount per percentage of disability at



C.M.A.No.3046 of 2010

WEB COPY

Rs.2,000/-, which is wholly sustainable. Further, he submitted that the compensation awarded under the other heads are just and reasonable, which does not require any enhancement. 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 disputed by the parties and so also the liability. 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 by the Tribunal. It is claimed by the appellant/claimant that the Tribunal has not awarded compensation towards disability in terms of the decision of the Apex Court. A perusal of the award reveals that, P.W.2 doctor assessed the disability of the claimant at 50% and he deposed that, due to the accident, the earning capacity of the claimant was not completely affected. Thereby, the Tribunal assessed the disability at 40% and awarded a sum of



C.M.A.No.3046 of 2010

WEB COPY

Rs.80,000/- towards disability by fixing a sum of Rs.2,000/- per percentage of disability, which is on the lower side. By considering the injuries sustained by the claimant, this Court is inclined to fix a sum of Rs.3,000/- per percentage of disability. Therefore, the amount under the head disability is enhanced to Rs.1,20,000/- (40 x Rs.3,000/-).

8. It is further claimed by the claimant that the Tribunal ought to have fixed the monthly income of the claimant as Rs.10,000/-. From the evidence of P.W.1, it is seen that at the time of accident, the claimant was a 1st year student and was working as part time worker and was earning a sum of Rs.3,500/- per month. As per Salary Certificate viz., Ex.P.9, the monthly income of the claimant was Rs.5,000/- and Batta Rs.40/- per day. However, the employer of the claimant was not examined, thereby, the Tribunal has fixed the monthly income of the claimant at Rs.3,000/- per month, which is wholly sustainable and the same does not require any interference.

9. Further, the Tribunal had awarded a sum of Rs.6,854/- towards



C.M.A.No.3046 of 2010

transportation; Rs.10,000/- towards extra nourishment; Rs.1,000/- towards damages to clothes; Rs.793/- towards medical expenses and Rs.25,000/- towards pain and suffering. This Court finds that the compensation awarded under the above heads are just and reasonable and the same does not require any interference.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :

<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of income for four months at the rate of Rs.3,000/- per month	12,000/-	12,000/-
2	Transportation	6,854/-	6,854/-
3	Extra nourishment	10,000/-	10,000/-
4	Damage to clothes	1,000/-	1,000/-
5	Medical expenses	793/-	793/-
6	Pain and suffering	25,000/-	25,000/-
7	Disability of 40%	80,000/-	1,20,000/- (enhanced)
	Total	1,35,647/-	1,75,647/-
	Rounded off to	1,35,650/-	1,75,650/-



C.M.A.No.3046 of 2010

WEB COPY

11. The Tribunal has fixed the negligence on the first respondent and the second respondent being the insurer of the first respondent, the Tribunal has ordered for pay and recovery. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.1,35,650/-** to **Rs.1,75,650/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.1692 of 2006 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 four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant is directed to pay necessary additional Court fee on the enhanced compensation amount and thereafter, the second respondent/Insurance Company is at liberty to recover the said amount from the first respondent in the manner



C.M.A.No.3046 of 2010

known to law. There shall be no order as to costs in the present appeal.

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04.10.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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C.M.A.No.3046 of 2010

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1.The Motor Accident Claims Tribunal,
(VI Small Causes Court),
Chennai.

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



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C.M.A.No.3046 of 2010

M.DHANDAPANI, J.,

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C.M.A.No.3046 of 2010

04.10.2023