



C.M.A.Nos.171 & 179 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.171 & 179 of 2022

and

C.M.P.No.5727 of 2022

C.M.A.No.171 of 2022

P. Balakrishnan

... Appellant

Vs

1. A. Baseer

2.National Insurance Company Limited,
Motor Third Party Claims HUBI,
No.751, Anna Salai, Chennai – 600 002.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2020 in MCOP.No.5082 of 2014 on the file of the Special Sub Court No.II, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Ms. P.T. Saleem Fathima

For Respondents : Mrs. R. Sree Vidhya, for R2
Government Advocate
R1 – Ex parte



C.M.A.Nos.171 & 179 of 2022

C.M.A.No.179 of 2022

G. Deepak

... Appellant

Vs

1. A. Baseer

2.National Insurance Company Limited,
Motor Third Party Claims HUBI,
No.751, Anna Salai, Chennai – 600 002.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2020 in MCOP.No.5079 of 2014 on the file of the Special Sub Court No.II, Motor Accident Claims Tribunal, Small Causes Court, Chennai.

For Appellant : Ms. P.T. Saleem Fathima

For Respondents : Mrs. R. Sree Vidhya, for R2
R1 – Ex parte

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the claimants seeking enhancement of compensation awarded by the Tribunal in the award dated 22.01.2020, made in M.C.O.P. Nos.5082 & 5079 of 2014 respectively on the file of the Motor Accident Claims Tribunal, (Small Causes Court) Special Sub Court No.II, Chennai.



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2. The appellants filed M.C.O.P.Nos.5082 & 5079 of 2014 on the file of the Motor Accident Claims Tribunal, (Small Causes Court) Special Sub Court No.II, Chennai claiming a sum of Rs.24,00,000/- and Rs.33,00,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 06.01.2020.

3. According to the appellants, on the date of accident, i.e. 06.01.2020 at about 09.20 hours, while they were travelling in two different motorcycles, proceeding on the Chengalpattu – Thirukazhukundran main road, near Thirumani cross road, the car bearing Registration No.TN-05-B-7500 which was coming in opposite direction, driven by its driver in a rash and negligent manner endangering public safety, hit both the motorcycles and caused the accident; that in the above said accident, both the appellants sustained grievous injuries and hence, filed claim petitions claiming compensation against the respondents.

4. The first respondent remained ex parte before the Tribunal.



5. The second respondent filed a counter statement denying all the averments made by the appellants in the claim petition; and in any case the compensation claimed by the appellants is excessive and prayed for dismissal of the claim petitions.

6. The appellants examined themselves as PW1 and PW2 and marked Ex.P.1 to Ex.P.29. The second respondent did not examine any witness or mark any document on their side. Court documents were marked as Ex.C1 and Ex.C2.

7. The Tribunal after considering the evidence and documents filed on the side of the appellants, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the first respondent and directed the second respondent to pay a sum of Rs.2,85,800/- in MCOP.No.5079 of 2014 (C.M.A.No.179 of 2022) and Rs.1,35,700/- in MCOP.No.5082 of 2014 (C.M.A.No.171 of 2022) as compensation to the appellants.



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8. The learned counsel for the appellant submitted that the award of compensation is meagre. The Tribunal had not considered the future medical expenses to be incurred by the appellant for removal of steel implant. The learned counsel submitted that this Court had referred the appellant to the Medical Board and the Medical Board assessed the disability at 3%. The appellant has filed C.M.P.No.5727 of 2022 to receive the original bills issued by the hospital which had treated the appellant as additional documents. The learned counsel submitted that the appellant had spent Rs.47,524/- towards medical expenses for removal of implant and prayed for compensation towards future medical expenses.

9. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellants prayed for dispensing with notice to him. Hence, notice to the first respondent is dispensed with.

10. The learned counsel for the second respondent per contra submitted that the Medical Board which had examined the appellant during the pendency of the claim petition, had assessed the disability as nil. Even



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now, the Medical Board assessed the disability only at 3%. Therefore, the award of the Tribunal is just and reasonable and hence, prayed for dismissal of the appeal.

11. The only question involved in the instant appeal is -

Whether the compensation awarded by the Tribunal is just and reasonable?

12. Admittedly, the Medical Board had opined that there was nil disability by their certificate dated 10.05.2019. Pursuant to the orders of this Court, the appellant was examined by the Medical Board once again on 02.05.2022. The Medical Board had examined the appellant and assessed the disability at 3%. The appellant was unable to point out any evidence on record to prove that he suffered functional disability. Therefore, in view of the disability certificate issued by the Medical Board, the appellant would be entitled to Rs.4,000/- per percentage of disability. Therefore, the compensation under the head disability has to be $\text{Rs.4,000} \times 3 = 12,000/-$.



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13. C.M.P.No.5727 of 2022 in C.M.A.No.171 of 2023 has been

filed by the appellant to receive additional document. The learned counsel for the second respondent has no serious objection and hence, the said CMP is allowed.

14. The appellant has produced the original bills for the amount spent by the him for removal of the implant, which comes up to Rs.47,574/- and the appellant is entitled for the same. It is seen from the nature of injuries that the appellant would have lost income for nearly six months. Considering the avocation of the appellant and year of accident, this Court fixes the notional income as Rs.12,000/- per month. Thus, the appellant would be entitled to Rs.72,000/- under the head loss of income. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,35,700/- to Rs.2,41,200/-, break-up as follows: -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	25,000/-	25,000/-	Confirmed
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	20,000/-	20,000/-	Confirmed
4.	Damages of clothes and things	1,000/-	1,000/-	Confirmed
5.	Attender charges	10,000/-	10,000/-	Confirmed
6.	Loss of amenities	15,000/-	15,000/-	Confirmed
7.	Loss of expectation	5,000/-	10,000/-	Enhanced
8.	Loss of marital life	5,000/-	10,000/-	Enhanced
9.	Loss of income	36,000/-	72,000/-	Enhanced
10.	Medical expenses	8,618/-	8,618/-	Confirmed
11.	Disability	-	12,000/-	Granted
12.	Future Medical Expenses	-	47,574/-	Granted
	Total	1,35,618/- Rounded off to Rs.1,35,700	2,41,192/- Rounded off to Rs.2,42,200	Enhanced by Rs.1,06,500/-

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16. The learned counsel for the appellant submitted that the award of compensation is meagre and considering the nature of injuries, the



Tribunal ought to have awarded higher compensation under all heads.

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17. Per contra, the learned counsel for the second respondent submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for. The learned counsel therefore, prayed for dismissal of the appeal.

18. The learned counsel for the appellant apart from saying that the compensation is meagre, was unable to point out any infirmity in the finding of the Tribunal. However, this Court finds that considering the nature of injuries and avocation, the appellant would have suffered loss of income for a period of six months. In the facts and circumstances, taking into account, the avocation and year of accident, this Court fixes the notional income as Rs.12,000/- per month. Thus, the appellant would be entitled to Rs.72,000/- under the head loss of income. Considering the nature of injuries, the appellant would also be entitled to enhancement of Rs.10,000/- each under the heads loss of expectation and loss of marital life. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation



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awarded by the Tribunal is enhanced from Rs.2,85,800/- to Rs.3,21,800/-,

break-up as follows: -

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and suffering	25,000/-	25,000/-	Confirmed
2.	Transportation	10,000/-	10,000/-	Confirmed
3.	Extra nourishment	20,000/-	20,000/-	Confirmed
4.	Damages of clothes and things	1,000/-	1,000/-	Confirmed
5.	Attender charges	10,000/-	10,000/-	Confirmed
6.	Loss of amenities	15,000/-	15,000/-	Confirmed
7.	Loss of expectation	10,000/-	10,000/-	Confirmed
8.	Loss of marital life	10,000/-	10,000/-	Confirmed
9.	Loss of income	36,000/-	72,000/-	Enhanced
10.	Medical expenses	1,48,765/-	1,48,765/-	Confirmed
	Total	2,85,765/- Rounded off to Rs.2,85,800/-	3,21,765/- Rounded off to Rs.3,21,800/-	Enhanced by Rs.36,000/-

20. In the result,

(i) C.M.A.No.171 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.1,35,700/- is



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hereby enhanced to Rs.2,42,200/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

(ii) C.M.A.No.179 of 2023 is partly allowed and the compensation awarded by the Tribunal at Rs.2,85,800/- is hereby enhanced to Rs.3,21,800/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

(iii) The second respondent / Insurance Company is directed to deposit the award amount, now determined by this Court in both the appeals along with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment.

(iv) On such deposit, the appellant / claimant in both the appeals are permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn.



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(v) The appellant / claimant in both the appeals are

WEB COPY directed to pay the necessary Court Fee, if any, on the enhanced
award amount. No costs.

28.08.2023

Index: Yes/No

Neutral Citation: Yes/No

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Exhibits marked in the appeal: -

Ex.P.30 – Discharge Summary

Ex.P.31 – Outpatient treatment records

Ex.P.32 – Medical Bills for a sum of Rs.47,524

28.08.2023

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SUNDER MOHAN, J.

AT

To

- 1.The Motor Accident Claims Tribunal,
Special Sub Court No.II, Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.

C.M.A.Nos.171 & 179 of 2022 and
C.M.P.No.5727 of 2022

28.08.2023