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C.M.A.No.687 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.687 of 2011

P.Dakshnamoorthy (Deceased)

1.D.Jothi

2.D.Durairaj

3.D.Rohini

4.D.Karthikeyan

[Appellants 1 to 4 brought on record as LR's of sole appellant
viz., P.Dakshnamoorthy, vide order dated 11.10.2023 made
in C.M.P.No.17592 of 2022 in C.M.A.No.687 of 2011]

... Appellants

Vs.

1.P.Pandian

2.T.Francis

3.The Oriental Insurance Co. Ltd.,

A-13, 2nd Avenue, Anna Nagar,

Madras.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 04.12.2008 made in M.C.O.P.No.3307 of 2003 on the file of the Motor Accident Claims Tribunal, (Addl. District and Sessions Court, Fast Track Court – V), Chennai.



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For Appellants : Mr.S.Gunasekaran

For Respondents : Not Ready in Notice [R1 & R2]
Mr.J.Chandran [R3]

JUDGMENT

Aggrieved by the compensation granted by the Motor Accident Claims Tribunal, (Additional District and Sessions Court, Fast Track Court – V), Chennai in M.C.O.P.No.3307 of 2003, the present appeal has been filed before this Court.

2. The appellants are the wife, daughters and son of the deceased claimant. On 06.03.2000 at about 05.30 p.m., when the petitioner was riding his motorcycle Suzuki Samurai bearing Reg.No.TN 02 8168, a van bearing Reg.No.TDS 9222 belonging to the first respondent and insured with the third respondent, driven by the first respondent in a rash and negligent manner, dashed against the petitioner, due to which, the petitioner sustained severe head injury and injuries all over the body. Therefore, he filed a petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him.



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3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.3 and examined one Udayakumar as P.W.3 and marked Ex.P.1 to Ex.P.16. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.1,20,000/- under various heads. Not satisfied with the same, the appellants has preferred the present appeal seeking enhancement.

4. During the pendency of this appeal, the claimant died on 29.08.2020. Therefore, the appellants 1 to 4 were brought on record as legal heirs of the deceased claimant, vide order dated 11.10.2023 made in C.M.P.No.17592 of 2022 in C.M.A.No.687 of 2011.

5. The learned counsel appearing for the appellants submitted that, when the Tribunal has accepted that the van was driven in a rash and negligent manner and was the cause for the accident and when P.W.2 doctor assessed the disability of the claimant at 80%, the compensation



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awarded by the Tribunal by assessing the disability at 50% is grossly inadequate. Further, he submitted that the compensation awarded under the heads pain and suffering and loss of earnings is minimal and the same requires to be reconsidered. Accordingly, he prays for appropriate enhancement in favour of the appellants.

6. Per contra, the learned counsel appearing on behalf of the third respondent submitted that, the doctor who had not given treatment to the claimant was examined as a witness and though he was not an expert in that field, however, he assessed the disability at 80% is not sustainable. Considering the said aspect, the Tribunal awarded a sum of Rs.50,000/- by assessing the disability at 50% is reasonable and so also the compensation awarded under the other heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

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



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8. 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 by the Tribunal. A perusal of the award passed by the Tribunal reveals that, though P.W.2 doctor assessed the disability of the claimant at 80%, however, the Tribunal fixed the disability at 50%, which is on the lower side and a higher percentage of disability has to be fixed for the injuries sustained by the claimant. Hence, this Court fixes the percentage of disability of the claimant at 70%, since the same varies from doctor to doctor. Therefore, the compensation under the head of permanent disability stands enhanced to a sum of Rs.70,000/- (70% x Rs.1,000/-) by adopting a sum of Rs.1,000/- per percentage of disability.

9. Further, the Tribunal had awarded a sum of Rs.15,000/- towards loss of earning; Rs.1,000/- towards transport to hospital; Rs.2,000/- towards extra nourishment; Rs.40,000/- towards medical expenses and Rs.12,000/- towards pain and suffering. This Court finds that the compensation awarded under the heads loss of earning, transport to



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hospital, extra nourishment and medical expenses are just and reasonable and does not require any interference. However, insofar as the compensation awarded towards pain and suffering is concerned, this Court feels that a sum of Rs.20,000/- would be just and reasonable compensation.

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 earning	15,000/-	15,000/-
2	Transport to hospital	1,000/-	1,000/-
3	Extra nourishment	2,000/-	2,000/-
4	Medical expenses	40,000/-	40,000/-
5	Pain and suffering	12,000/-	20,000/- (enhanced)
6	Permanent disability	50,000/-	70,000/- (enhanced)
	Total	1,20,000/-	1,48,000/-

11. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount



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from **Rs.1,20,000/-** to **Rs.1,48,000/-**. The third respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.3307 of 2003 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. However, it is made clear that the appellants will not be entitled for any interest for the period between the date of dismissal for non-prosecution and the date of restoration of this appeal. On such deposit being made, the appellants are permitted to withdraw the award amount, less, the amount, if any already withdrawn. The appellants are directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the appellants. There shall be no order as to costs in the present appeal.

11.10.2023

Index : Yes / No



C.M.A.No.687 of 2011

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

sp

M.DHANDAPANI, J.,

sp

To

1.The Motor Accident Claims Tribunal, (Additional District and Sessions Court, Fast Track Court – V), Chennai.

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

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C.M.A.No.687 of 2011

C.M.P.No.17592 of 2022

in

C.M.A.No.687 of 2011

M.DHANDAPANI, J.

This petition has been filed seeking to bring the LRs of the deceased appellant Mr.P.Dakshnamoorthy on record in C.M.A.No.687 of 2011 on the file of this Court.

2. Heard the learned counsel for the petitioners/appellants.

3. Mr.J.Chandran, learned counsel for the third respondent has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is ordered.

5. The Registry is directed to carryout the necessary amendment.

11.10.2023

(2/3)

sp



C.M.A.No.687 of 2011

C.M.P.No.17586 of 2022

in

C.M.A.No.687 of 2011

M.DHANDAPANI, J.

This petition has been filed seeking to restore the appeal in C.M.A.No.687 of 2011 on the file of this Court.

2. Heard the learned counsel for the petitioners/appellants.

3. Mr.J.Chandran, learned counsel for the third respondent has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is ordered and C.M.A.No.687 of 2011 is restored to file.

sp

11.10.2023

(1/3)