



C.M.A.No.3317 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

THE HON'BLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.3317 of 2012

Jesudoss

... Appellant

Vs.

1. Balaji

2. The Divisional Manager,
The Oriental Insurance Co.Ltd.,
No.75, Krishnan Street,
Tiruvannamalai Town.

...

Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act 1988 against the judgment and decree dated 22.09.2010 made in M.A.C.T.No.13 of 2008 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Thiruvannamalai.

For Appellant : Mr.P.Terry Chella Raja

For R2 : Mr.N.Sampath

R1 : Set exparte before the Tribunal



C.M.A.No.3317 of 2012

WEB COPY

J U D G E M E N T

On being unsatisfied by the award passed in M.A.C.T.No.13 of 2008 dated 22.09.2010 by the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Thiruvannamalai, the claimant has preferred this Civil Miscellaneous Appeal, for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act 1988, claiming compensation of Rs.10 Lakhs for the injuries sustained by him in the road accident that occurred on 28.11.2007.

3. The learned Tribunal after hearing both sides and upon consideration of oral and documentary evidence, has passed an award for a sum of Rs.1,45,000/- with 7.5% interest from the date of filing of petition till the date of deposit.



C.M.A.No.3317 of 2012

WEB COPY

4. The learned counsel appearing for the appellant/claimant would vehemently argue that the claimant, on account of the accident, suffered Grade III compound fracture over both bone left leg and he was 24 years old at the relevant point of time. He was working as Military Sepoy. He would further argue that the claimant's monthly salary was Rs.7441/- as per Ex.P.14-Salary Certificate. Because of the fracture, he lost his promotional opportunities and prayed to invoke multiplier method. The amounts awarded under the various heads are less and prayed for enhancement.

5. Per contra, the learned counsel appearing for the second respondent/Insurance Company would strenuously contend that as putforth by the appellant's side, if the appellant is not in service or he lost his promotional opportunities, relevant orders should have been filed and marked as proof of the said fact. The document which is filed along with the application under Order 41 Rule 27 C.P.C., is an opinion and it cannot be relied upon. He would further contend that based on the available records, the Tribunal has granted compensation for a sum of



C.M.A.No.3317 of 2012

Rs.1,45,000/- is a well reasoned order and prayed to confirm the award.

WEB COPY

6. It is the evidence of P.W.1-Mr.Jesudoss that on 28.11.2007 at about 3.50 p.m., while he was returning to his residence in his two wheeler bearing Registration No.TCO.8838, a Milk Lorry bearing Registration No.MDN 6003 came in a rash and negligent manner and hit on his vehicle and due to the said impact, he sustained both bone fracture over his left leg and the same is not in dispute.

7. The application filed by the appellant under Order 41 Rule 27 C.P.C., to receive the copy of the certificate issued by his office, was allowed on 14.06.2023. As rightly putforth by the learned counsel appearing for the Insurance Company that if the promotional opportunities have been denied to the appellant, to substantiate the same, relevant particulars should have been obtained and filed by him.

8. From the evidence of the appellant/P.W.1, it appears that on account of the accident, as the Milk Lorry hit his two wheeler from behind and he suffered fracture of both bone left leg. He was given first



C.M.A.No.3317 of 2012

WEB COPY

aid treatment at Thiruvannamalai Government Hospital and thereafter, he took inpatient treatment for about one week at Thiruvannamalai Rajam Nursing Home and he underwent surgery on 29.11.2007.

9. To assess the disability of the appellant, P.W.2-Dr.Ravindran has been examined. It is his evidence that since the appellant having sustained fracture, it is very difficult for him to walk and hence he has assessed the disability at 35% . From Exs.P3 and P4, namely Identity Card and Salary Certificate, it is evident that the appellant was a Sepoy. One cannot deny the fact that because of fracture suffered by the appellant, he would have faced difficulties personally and officially. As a Military Man, he is supposed to be physically active during the working hours.

10. Therefore, considering the abovesaid facts, this Court deems it fit to fix the disability at 28% and an amount of Rs.56,000/- is granted towards partial permanent disability. For loss of amenities, an amount of Rs.15,000/- is granted. For loss of income during the treatment period,



C.M.A.No.3317 of 2012

WEB COPY

an amount of Rs.10,000/- is granted in addition to the amount already granted by the Tribunal. In all other aspects, award passed by the Tribunal appears to be reasonable and need not be interfered with. The compensation awarded by the Tribunal is reworked and tabulated as follows:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	For Future Medical Expenses	70,000/-	70,000/-	confirmed
2	For Pain and Sufferings	15,000/-	15,000/-	confirmed
3.	For Partial Permanent disability	35,000/-	56,000/-	enhanced
4	For Loss of income during treatment period	25,000/-	35,000/-	enhanced
5	For Loss of amenities	-	15,000/-	granted
	Total	1,45,000/-	1,91,000/-	

Thus, the compensation awarded by the Tribunal is enhanced from **Rs.1,45,000/- to Rs.1,91,000/-** which would carry interest at 7.5% from



C.M.A.No.3317 of 2012

the date of filing of the petition till the date of deposit.

WEB COPY

11. In the result,

(i) The Civil Miscellaneous Appeal is **partly allowed**. There shall be no order as to No costs;

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.1,45,000/- to Rs.1,91,000/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.1,91,000/-** (less the amount already deposited if any) with interest at 7.5% from the date of filing of the petition till the date of deposit, to the credit of M.A.C.T.No.13 of 2008 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Thiruvannamalai, within a period of eight weeks from the date of receipt of a copy of this Judgment; and

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition.

04.09.2023

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



WEB COPY



C.M.A.No.3317 of 2012

To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thiruvannamalai.
2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.3317 of 2012

R.KALAIMATHI, J.

mfa

C.M.A.No.3317 of 2012

04.09.2023