



C.M.A.No.1760 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1760 of 2015

Williams

...Appellant

Vs.

1.Prasanth

2.Divisional Manager,
United India Insurance Co. Limited,
No.46, Katpadi Road,
Vellore.

3.Prabavathy

4. Branch Manager,
Oriented Insurance Co. Limited,
No.75, Krishnan Street,
Thiruvannamalai.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.10.2010 made in M.A.C.T.O.P.No.449 of 2008 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai.



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WEB COPY For Appellant : M/s.M.Malar

For Respondents : Mr.M.Krishnamoorthy for R2
: M/s.M.J.Vijayaraghavan for R4

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant in MACTOP.No.449 of 2008 for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Principal Sub Judge, Tiruvannamalai, by order dated 29.10.2010 whereby the Tribunal has awarded Rs.3,45,025/- along with interest at the rate of 7.5% per annum.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the claimant is as follows:

On 12.12.2007, claimant along with five others travelled in Qualiz car bearing Registration No.Ka-06-Z-1111 on the Tiruvannamalai to Vellore Road. At about 06.30 p.m., while the vehicle reached near Thurkai Nammiyanthal Kootroad, Driver of the Qualiz car has driven the



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vehicle in a rash and negligent manner and dashed on the lorry bearing Registration No.TN 23 6723 which was parked on the road, belongs to the third respondent. Due to the accident, the claimant and others sustained grievous injuries and they were taken to Tiruvannamalai Government Hospital for treatment. A Criminal Case was registered against the Driver of the Qualiz car in Crime No.564 of 2007 under Sections 279, 33, 7338, 304(A) of IPC on the file of the Tiruvannamalai Rural Police Station.

4. The second and fourth respondents are the insurer of the car and lorry respectively. The claimant has claimed compensation for a sum of Rs.10,00,000/- for the injuries caused to him from the respondents. The first and third respondents, the owner of the car and lorry respectively have not contested the claim petition and remained exparte.

5. The second respondent has filed counter and contended that the Driver of the Qualiz car was under the influence of alcohol at the time of accident hence there is a violation of policy condition. Learned counsel also disputed the manner in which the accident alleged to have been



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occurred and further contended that the lorry was parked in the middle of the road without following the rules, which resulted in accident. Hence, the learned counsel submitted that the second respondent is not liable to pay the compensation.

6. The fourth respondent has filed counter and contended that the accident was occurred due to the negligent driving of the Driver of Qualiz car in which the claimant has travelled and the Driver of the lorry has not parked the same in the road hence he is not responsible for the accident. The compensation shall not be paid by the third or fourth respondents. The learned counsel also submitted that the compensation claimed by the claimant under various heads are also excessive, hence, prays to dismiss the claim petition.

7. Before the Tribunal, the claim petition filed by the claimant was taken up for enquiry along with five other claim petitions and common enquiry was conducted and common award has been passed by the Tribunal. Except the claimant herein i.e., the claimant in MCOP.No.449 of 2008 no other claimants or the respondents in the other claim petitions



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have come forward to file any Appeal challenging the award.

8. The claimant in MCOP.No.449 of 2008 filed this Civil Miscellaneous Appeal seeking for enhancement of compensation aggrieved over the compensation awarded to him.

9. The learned counsel for the claimant would submit that the injuries sustained by the claimant/ Williams has resulted in causing functional permanent disability and the same has not been properly appreciated by the Tribunal and the compensation awarded under various heads are also on lower side, hence, prays to enhance the compensation.

10. Learned counsel for the fourth respondent has submitted that Tribunal has exonerated the fourth respondent from paying compensation since Tribunal has held that the Driver of the Qualiz car is responsible for the accident and the lorry which was parked on the road was not responsible for the accident. Hence, prays to confirm the award of the Tribunal and also submitted that the quantum of compensation awarded is also proper and prays to confirm the same.



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11. Heard the submissions made by the respective counsel on either side and perused the materials placed on records.

12. Before the Tribunal, to prove the disability, the claimant has examined P.W.7/Doctor, who has assessed the disability of the claimant. P.W.7 has stated that the claimant has sustained fracture on left lower humerus bone and also on the left shoulder joint and DCP bone grafting has also been performed. Claimant also sustained lacerated injuries on the left leg, chest, right leg, right wrist and left wrist. Based on the injuries sustained by the claimant, Doctor has assessed the disability as 35%. The claimant after the accident was admitted at Tiruvannamalai Government Hospital on 12.12.2007 and discharged on 15.12.2007. Thereafter he once again admitted at HOSMAT Hospital at Bangalore and undergone in patient treatment from 31.12.2007 and discharged on 03.01.2008. Based on the Medical bills which were marked as Exs.P.8 to P.15, Tribunal has granted Rs.2,47,025/- under the head Medical Expenses and the same is confirmed. Considering the period of medical treatment, Tribunal has granted Rs.12,000/-, under the head Loss of Income for the



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period of four months treatment period, which does not require any modification. The nature of injuries sustained by the claimant would shows that he has sustained commutated fracture on the shoulder and subsequently it has not caused any disability in continuing his work. Even though it was stated that he was Maison by profession but this injuries has not reduced his ability to do the manual work. Hence, it could not be termed as functional permanent disability and the Tribunal has rightly held that it is only a partial permanent disability and awarded Rs.2,000/- per percentage of injury and for 35% of the disability Rs.70,000/- is awarded and the same is reasonable and there is no need for modification. The Tribunal has also awarded Rs.2,000/- under the head Transportation Charges, this Court is of the view that the same is on the lower side and the same is revised to Rs.10,000/- since, the claimant has undergone treatment at HOSMAT Hospital at Bangalore. For the head Extra Nourishment Rs.2,000/- is awarded by the Tribunal and this Court is of the view that it is on lower side and the same is enhanced to Rs.5,000/-. The claimant suffered fractures in humerous bone and he has undergone bone grafting surgery and also sustained injuries all over his body even though they were in simple in nature, this Court is of the view



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that the Pain and Suffering caused due to the injuries needs additional compensation, accordingly the same is modified as Rs.30,000/-. As far as the compensation awarded under the others heads are just, fair and proper and does not call for any interference by this Court and the same is confirmed.

13. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical Expenses	2,47,025/-	2,47,025/-	Confirmed
2.	Transport to Hospital	2,000/-	10,000/-	Enhanced
3.	Extra Nourishment	2,000/-	5,000/-	Enhanced
4.	Attender Charges	2,000/-	2,000/-	Confirmed
5.	Loss of Income for the period of four months	12,000/-	12,000/-	Confirmed
6.	Pain and Suffering	10,000/-	30,000/-	Enhanced
7.	Partial Permanent Disability	70,000/-	70,000/-	Confirmed
	Total	Rs.3,45,025/-	Rs.3,76,025/-	Rs.31,000/- Enhanced



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14. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed by enhancing the compensation awarded by the Tribunal to Rs.3,76,025/- from Rs.3,45,025/-.

(ii) The second respondent is directed to deposit the above said enhanced compensation amount along with accrued interest at the rate of 7.5% per annum within a period of eight weeks from the date of receipt of copy of the order, less the amount, if any, deposited. The claimant thereafter will be entitled to withdraw the amount by making appropriate application.

(iii) There shall be no order as to costs.

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Index : Yes/No

Neutral Citation : Yes/No



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K.RAJASEKAR, J.

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To:

- 1.The Principal Sub Judge, Tiruvanamalai.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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