



C.M.A. No. 1214 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1214 of 2021

Sakthivel

... Appellant / Petitioner

Vs.

1. Perumal

2. The Oriental Insurance Co. Ltd.,
No.3L, Sithaveerappa Chetty Street,
Dharmapuri.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 24.02.2020 passed in M.C.O.P. No.933 of 2015 on the file of the Principal Subordinate Judge, Motor Accident Claims Tribunal, Dharmapuri.

For Appellant : Mr. D. Rameshkumar

For R1 : No Appearance

For R2 : Mr. N. Sampath

JUDGMENT



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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.933 of 2015, dated 24.02.2020 on the file of the Principal Subordinate Judge, Motor Accident Claims Tribunal, Dharmapuri.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 10.05.2015, at about 09:00 hours, the claimant was riding his two wheeler bearing Registration No.TN-20-AQ-2980 towards Kesampatti via Nallampalli road, at that time, a tractor bearing Registration No.TN-29-AP-1347 driven by its driver in rash and negligent manner came in the opposite direction and hit on the two wheeler of the claimant, which resulted in grievous injuries to the claimant. A criminal case was also registered against the driver of the tractor in Cr.No.184/2015 u/s. 279, 337 of I.P.C. on the file of the Adhiyamaankottai Police Station. Due to which, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.5,00,000/-.

4. The first respondent is the owner of the tractor bearing



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Registration No.TN-29-AP-1347 and has not contested the claim, the second respondent is the insurer of the tractor has filed a counter and disputed the manner in which the accident has taken place and stated the accident was taken place due to the negligent act on the part of the claimant and also disputed the age, occupation and income of the claimant. The insurance company has also contended that the compensation claimed under various heads is on the higher side, and prayed to dismiss the claim petition.

5. Before the Tribunal, the claimant himself examined as P.W.1 and Exs.P.1 to P.9 were marked. On the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point no.1 has held that the tortuous act on the part of the driver of the first respondent tractor bearing Registration No.TN-29-AP-1347 is responsible for the accident. In point no.2, the Tribunal has held the second respondent insurance company is liable to pay the compensation to the claimants. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.1,86,179/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.



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7. Aggrieved over the quantum of compensation, the claimant has approached this Court for enhancement of the compensation awarded by the Tribunal.

8. The learned counsel appearing for the claimant has submitted that the major grievances of the claimant is that the compensation awarded under the head disability is on the lower side since, the Tribunal has not followed the norms followed by this Court in granting compensation under disability by adopting percentage method. The learned counsel also further submitted that the Tribunal has not awarded compensation for future medical expenses since the claimant requires further treatment, hence prays to modify the award.

9. The learned counsel appearing for the second respondent – insurance company has submitted that based on the evidence placed on record, the Tribunal has rightly awarded just compensation, hence prays to confirm the same.

10. I have considered the submissions made on both sides and



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perused the materials placed on record:

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11. The claimant has sustained both bone fracture and multiple internal injuries to hip, chest and shoulder treated by fixing rod and screw and the claimant was also undergone treatment in the Dharmapuri Government Hospital and subsequently, he was treated at Ganga Hospital, Coimbatore. Considering the above injuries sustained by the claimant, his disability was assessed as 20% as per the disability certificate marked as Ex.P.9. The Tribunal has also accepted the disability and treated the injury as a non-functional disability and awarded Rs.3,000/- per percentage of injury, thereby granting compensation for Rs.60,000/- under the head disability. This Court judgment in *M. Chinnathambi vs. S. Deepa and another [CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]*, this Court has awarded Rs.4,000/- per percentage of injury for the accident cases taken place from the year 2014-2015, hence, considering the date of accident, this Court is inclined to modify the same by adopting Rs.4,000/- per percentage of injury and award compensation for a sum of Rs.80,000/- (Rs.4,000/- x 20% disability).

12. The other contention of the learned counsel appearing for the claimant is that the Tribunal has not granted any compensation under the



head future medical expenses, on perusal of the evidence placed on record, the claimant has been treated with fixation of rod and screw for the fracture sustained by the claimant on his right leg and the same has to be removed. The Tribunal has not considered the same for granting future medical expenses to the claimant, hence this Court is inclined to grant Rs.40,000/- under the head future medical expenses to the claimant for his further medical treatment. The Tribunal has granted Rs.5,000/- towards attender charges, on perusal of the medical records, the claimant has undergone treatment for a period of nearly three months, hence this Court is of the view that granting Rs.5,000/- towards attender charges is on the lower side and the same is hereby modified to Rs.10,000/-. Whereas the compensation awarded under other heads are concerned, the Tribunal has granted just compensation and the same are hereby confirmed. However, the Tribunal while calculating total compensation had made a calculation error and arrived total compensation as Rs.1,86,179/- instead of Rs.1,91,179/-.

13. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	20% Disability	60,000/-	80,000/-	Enhanced
2.	Pain and Suffering	25,000/-	25,000/-	Confirmed
3.	Transportation expenses	10,000/-	10,000/-	Confirmed
4.	Attender charges	5,000/-	10,000/-	Enhanced
5.	Extra Nourishment and damage to articles	10,000/-	10,000/-	Confirmed
6.	Loss of income during treatment period (3 months)	18,000/-	18,000/-	Confirmed
7.	Medical expenses	63,179/-	63,179/-	Confirmed
8.	Future Medical expenses	---	40,000/-	Granted
	Total Compensation	1,86,179/-(sic) 1,91,179/-	2,56,179/-	Enhanced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at **Rs.1,86,179/- (sic)** is hereby enhanced to **Rs.2,56,179/- [Rupees Two Lakh Fifty Six Thousand One hundred and Seventy Nine only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.933 of 2015



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on the file of the Principal Subordinate Judge, Motor Accidents Claims Tribunal, Dharmapuri. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

28.11.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Principal Subordinate Court,
Motor Accidents Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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