



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.301 of 2022

Sellappan

...Appellant

Vs.

1.Udhayakumar

2.The United India Insurance Co., Ltd.,
5-B/11, State Bank of India Upstairs,
Salem Main Road, Rasipuram.

... Respondent

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.11.2021 in MCOP.No.704 of 2020 on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates for R2
: R1- No appearance



J U D G M E N T

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The Civil Miscellaneous Appeal is filed seeking the enhancement of compensation granted by the Tribunal in the award dated 10.11.2021 made in M.A.C.T.O.P.No.704 of 2020 on the file of Motor Accident Claims Tribunal/ Special Subordinate Judge No.II, Salem

2. The appellant is the claimant in MCOP.No.704 of 2020 on the file of Motor Accident Claims Tribunal/ Special Subordinate Judge No.II, Salem. He filed the claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.07.2019.

3. According to the appellant, on the date of accident i.e., on 07.07.2019, while he was walking cautiously on the Rasipuram - Tiruchengode Main road to his house, after attending a marriage, the driver of the car bearing registration No.TN-28-AD-5463 came from behind in a rash and negligent manner and dashed against the appellant. Due to the impact, the appellant suffered grievous injuries and therefore, filed claim petition claiming a sum of Rs.15,00,000/- as compensation by the respondents.

4. The first respondent, who is the driver of the car was set *ex-parte* before the Tribunal.



5. The second respondent/Insurance Company filed counter statement, denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving of the driver of the car bearing registration No.TN-28-AD-5463. The appellant suddenly tried to cross the road without seeing the upcoming vehicles and invited the accident. The age, income and nature of injuries of the appellant are denied. In any event, the compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and marked Exs.P1 to P14. On the side of the second respondent/ Insurance Company no oral and documentary evidence was produced Disability Certificate issued by the Medical Board is marked as Ex.X1.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of the first respondent and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.2,12,530/- as compensation to the appellant.



8. The learned counsel for the appellant submitted that the award of the Tribunal in the facts and circumstances of this case is meager. The Tribunal ought to have considered the fact that the appellant was aged about 79 years at the time of the accident and one surgery was performed for the fracture suffered by him. In such circumstances, the Tribunal ought to have awarded more compensation under the head “Future Medical Expenses”. The Tribunal ought to have awarded compensation under the head “Pain and Suffering” and “Loss of Amenities”. Further, the Tribunal had granted compensation only two months under the head “Loss of Income”, since, the victim had suffered loss of income for nearly six months. Hence, the learned counsel prayed for enhancement of compensation.

9. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that the compensation awarded by the Tribunal is fair, just and reasonable and there is no reason to interfere with the award. The appellant had not produced any proof to show that he required further treatment and hence he is not entitled to compensation under the head "Future medical expenses". Hence, the Tribunal was right in not awarding the compensation under the head “ Future Medical Expenses” and hence, he prayed for dismissal of the appeal.



10. Though notice was served on the first respondent, none had entered appearance on his behalf before this Court.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/ Insurance Company and perused all the materials available on record.

12. This Court, on perusal of the pleadings and the judgment of the Tribunal, finds that the appellant has not produced any evidence before the Tribunal to justify his claim for future medical expenses. Even, before this Court the appellant was unable to produce any evidence for incurring future medical expenses after he was discharged from the hospital. Hence, the compensation under the said head cannot be awarded. However, this Court finds that the compensation awarded under the head “Pain and Suffering” at Rs.15,000/- is meagre. In the facts and circumstances of this case, this Court is of the view that the compensation under the said head can be enhanced from Rs.15,000/- to Rs.30,000/-. As regards the compensation under the head “loss of amenities” this Court is of the view that the same can be enhanced from Rs.10,000/- to Rs.25,000/-. As far as the compensation under the head “Loss of Income” is concerned, the Tribunal had granted compensation towards the loss of income only for two months. Considering the nature of injuries, it



would be reasonable to award compensation under the head "Loss of income" for three months. Hence, the compensation under the head "Loss of income" has to be enhanced to Rs.22,500/- (Rs.7,500/- x 3).

13. Thus, the compensation awarded by the 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 or reduced
1.	Permanent disability	60,000	60,000/-	confirmed
2.	Pain and Suffering	15,000	30,000/-	enhanced
3.	Loss of amenities	10,000	25,000/-	enhanced
4.	Medical expenses	82,530	82,530	confirmed
5.	Loss of income	15,000	22,500	enhanced
6.	Transport charges	10,000	10,000	confirmed
7.	Extra nourishment	10,000	10,000	confirmed
8.	Attendant charges	9000	9000	confirmed
9.	Damage to cloth and articles	1000	1000	confirmed
	Total	Rs.2,12,530/-	Rs.2,50,030/-	Enhanced by Rs.37,500/-



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14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,12,530/- is hereby enhanced to Rs.2,50,030/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any). The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs, less the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

20.07.2023

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

1.The Sepcial Subordinate Judge - II,
Motor Accident Claims Tribunal, Salem.

2.The Section Officer
VR Section, High Court of Madras.

SUNDER MOHAN,J.

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