



C.M.A.Nos.449 & 479 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.Nos.449 & 479 of 2021

Minor Anish

(The minor is represented by his

next friend/guardian/mother Radha)

... Appellant in C.M.A.No.449
of 2021

Jayakumar

... Appellant in C.M.A.No.479
of 2021

Vs.

1. K.Rajasekaran

2. M/s.The New India Assurance Co.Ltd.,

Divisional Office,

Amman Complex,

2nd Floor, 1360,

E.V.N.Road,

Erode – 11.

.. Respondents in both appeals

(1st respondent remained ex parte before

the Tribunal, hence notice may be

dispensed with for the 1st respondent)

Prayer in C.M.A.No.449 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the compensation amount awarded in the judgment and decree dated 06.06.2020 made in M.C.O.P.No.364 of 2018 on the file of the Special District Court / Motor Accident Claims Tribunal, Erode)



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Prayer in C.M.A.No.479 of 2021: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the contributory negligence fixed upon the appellant and for enhancement of the compensation amount awarded in the judgment and decree dated 06.06.2020 made in M.C.O.P.No.77 of 2018 on the file of Special District Court / Motor Accident Claims Tribunal, Erode.

In both Appeals:

For Appellant : Mr.C.Ramraj

For Respondents : Notice dispensed with [R1]
Mrs.R.Sreevidhya [R2]

COMMON JUDGMENT

Since the issue involved in the present cases are one and the same they are disposed of by way of this common judgment.

2. It is the case of the appellants that, on 08.10.2017 at about 10.00 a.m. when the appellant in C.M.A.No.479 of 2021 namely Jayakumar was riding his motor cycle bearing Registration No.TN 34 J 2918 along with his sister and sister's son who is the appellant in C.M.A.No.449 of 2021 who was travelling as a pillion rider, at that time a car bearing Registration No.TN 28 AW 9624 driven by its driver in a rash and negligent manner coming in the opposite direction dashed against the



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vehicle driven by said Jayakumar, due to which, the appellants and the sister of said Jayakumar sustained injuries all over their body. Claiming compensation in a sum of Rs.13,00,000/-, Rs.8,00,000/- and Rs.9,00,000/- the said Jayakumar along with his sister and her son have filed respective claim petitions.

3. Before the Tribunal, the claimants have examined P.W.1 and P.W.2 and marked Ex.P.1 to Ex.P.34. On the side of the respondents, neither any witnesses were examined nor any documents were marked. After adjudication, the Tribunal has awarded a sum of Rs.8,33,165/-, Rs.44,049/- and Rs.1,94,867/- respectively in favour of the claimants as compensation to be payable by the second respondent / insurance company. Challenging the compensation awarded in favour of claimants in respect of M.C.O.P.Nos.77 and 364 of 2018, who are the appellants herein have filed the present appeals challenging the quantum of compensation as well as the negligence fixed on the part of the claimant in M.C.O.P.No.77 of 2018.

4. The learned counsel appearing for the appellant in



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C.M.A.No.449 of 2021 submits that admittedly the accident is of the year 2017 and at the relevant point of time, per percentage of disability is Rs.5,000/-. Though the Tribunal had held that the appellant had sustained 10% partial permanent disability as per Ex.C.2, however, the Tribunal had awarded a only sum of Rs.30,000/- by fixing a sum of Rs.3,000/- per percentage of disability instead of Rs.5,000/- per percentage of disability, which requires to be reconsidered.

5. The learned counsel appearing for the appellant in C.M.A.No.479 of 2021 submits that though the tribunal has rightly fixed the disability at 20% permanent disability as per Ex.C.1 the disability certificate issued by the Doctor, however, the income fixed by the Tribunal to a sum of Rs.12,000/- per month is on the lower side, as the said Jayakumar earned more than Rs.15,000/- per month. Hence, he prayed to enhance the same.

6. The learned counsel appearing on the second respondent / insurance company submits that in respect of the appellant in C.M.A.No.449 of 2021, the award passed by the Tribunal is just and



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reasonable and the same does not require any interference. Insofar as the appellant in C.M.A.No.479 of 2021 is concerned, though the disability suffered by the said Jayakumar is only 20% permanent disability, however, the Tribunal has adopted multiplier method instead of adopting percentage method which cannot be acceded to. Hence, he prayed for passing appropriate orders.

7. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the second respondent and perused the materials placed on record.

8. Insofar as the appeal in C.M.A.No.479 of 2021, this Court is of the view that the compensation awarded in M.C.O.P.No.77 of 2018 is just and reasonable and the same does not require interference. Accordingly, the appeal filed by the appellant in C.M.A.No.479 of 2021 is dismissed and the award passed by the Tribunal in M.C.O.P.No.77 of 2018 is confirmed.

9. As regards, C.M.A.No.449 of 2021 is concerned, the factum and



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manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/claimant is with regard to the quantum of compensation awarded. Admittedly, the accident is of the year 2017 and at the relevant point of time, per percentage of disability is Rs.5,000/-. Though the Tribunal had held that the appellant had sustained 10% partial permanent disability as per Ex.C.2, however, the Tribunal had awarded a only sum of Rs.30,000/- under the head "disability" by fixing a sum of Rs.3,000/- per percentage of disability. Hence, this Court is inclined to fix a sum of Rs.5,000/- at the rate of per percentage of disability. Therefore, the amount under the head "disability" stands enhanced to a sum of Rs.50,000/- (10% x Rs.5,000/- = Rs.50,000/-).

10. Further, the Tribunal had awarded a sum of Rs.45,000/- towards "pain and suffering" which is on the lower side and the same is enhanced to a sum of Rs.75,000/-. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.



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11. In view of the above, the compensation awarded by the Tribunal in M.C.O.P.No.364 of 2018 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	Medical expenses	84,867/-	84,867/-
2	Extra nourishment	10,000/-	10,000/-
3	Pain and Suffering	45,000/-	75,000/- (enhanced)
4	Attender charges	15,000/-	15,000/-
5	Transportation charges	10,000/-	10,000/-
6	Disability	30,000/-	50,000/- (enhanced)
	Total	1,94,867/-	2,44,867/-

12. Accordingly, the appeal in C.M.A.No.449 of 2021 is partly allowed and the compensation amount is enhanced from Rs.1,94,867/- to Rs.2,44,867/- and the second respondent/Insurance Company is directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.364 of 2018 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 six weeks (6) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to



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transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount. There shall be no order as to costs.

20.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

- 1.Special District Court / Motor Accident Claims Tribunal, Erode.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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