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C.M.A.No.120 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

C.M.A. No.120 of 2018

K.Kumaresan

... Appellant

Vs.

1. P.Moorthy

2. S.Mallika

3. The Branch Manager

M/s. United India Insurance Co., Ltd.,

1171, Muthiah Complex,

Mettur Road,

Erode - 638 011

... Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 07.08.2017 made in M.C.O.P. No.279 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Court), Erode.

For Appellant : Mr.N.Manokaran

For Respondents : No Appearance



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## **J U D G M E N T**

This Civil Miscellaneous Appeal is filed by the claimant to the judgment and decree dated 09.08.2017 made in M.C.O.P. No.279 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode, and to enhance the compensation awarded by the Tribunal.

2. The appellant is the claimant. The 1st respondent is the driver of the offending Auto Rickshaw. The 2nd and 3rd respondents are the owner and insurer of the offending Auto Rickshaw.

3. The case of the claimant is that on 20.05.2016 at about 8.00 a.m., he was riding his Honda Unicorn motor-cycle bearing Regn. No.TN-32-F-1219 on the left side of the EVN road from south to north near Government Hospital, Erode. At that time, the 1st respondent herein came from north to south, by driving the Auto Rickshaw bearing Regn. No.TN-30-C-2862 in a rash and negligent manner and while taking 'U' turn to proceed from south to north, he dashed the claimant due to which, the claimant sustained fracture on the right side forehead skull, injury on the right side cheek and blood injury on the back side of the left foot.



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4. The claimant filed a claim petition in M.C.O.P. No.279 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode, claiming compensation of Rs.5,00,000/- for the injuries sustained by him stating that he was aged 23 years at the time of accident and was working as a driver and earning Rs.15,000/- per month and was contributing the same to his family consisting of aged parents and unmarried sister. After the accident, he was taken to Government Hospital, Erode, where he was given first aid and subsequently, he was shifted to Vijaya Hospital, Erode where he took treatment for 8 days as an inpatient and also continuing treatment as out patient till date. Even after the treatment, he is suffering from vomiting and could not take normal food and he is having giddiness often and therefore, he is unable to walk, sit and stand freely and and he needs help of others while climbing on the stair case. Further, he lost his eye sight and also hearing and smelling power and that the claimant has become a vegetable like surviving persons because of this accidental injuries.

5. Before the Tribunal, the 1st and 2nd respondents remained ex-parte.



6. In order to substantiate the claim before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 16 documents were marked as Ex.P.1 to Ex.P.16. On the side of the respondents, no oral and documentary evidence were let in.

7. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.2,09,200/- with interest at 7.5% per annum from the date of petition till the date of deposit and directed the 3rd respondent to pay the compensation on behalf of the 2nd respondent.

8. Aggrieved by the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

9. Though notice served and names are printed, there is no representation for the respondents.



10. The learned counsel for the appellant/claimant submitted that the claimant was aged 23 years at the time of accident and was possessing driving licence for heavy vehicles. He was working as an acting driver and was earning Rs.15,000/- per month. Due to the accident, he sustained fracture on the forehead skull due to which, he lost his earning capacity and also suffered functional disability. The doctor who gave the disability certificate/Ex.P.16, was examined as P.W.2. P.W.1/claimant has deposed that due to the accidental injury, he was not in a position to do any work as before the accident. The Tribunal failed to consider the same and instead of awarding compensation of Rs.5,00,000/-, the Tribunal has awarded only Rs.2,09,200/- by holding that the avocation and the income of the claimant was not proved and by considering the decision of the Hon'ble Supreme Court in ***Kala Devi & others Vs. Bhagavan Das Chauhan and others reported in 2014 (2) TANMAC 628***, fixed only Rs.9,000/- notionally which is on the lower side. Normally, a driver would earn minimum of Rs.15,000/- per month. But the Tribunal has fixed only Rs.9,000/- based on the above decision of the Hon'ble Supreme Court which is of the year 2003, whereas, in this case, the accident took place in the year 2016. Therefore, the income has to be fixed higher than what the Tribunal has fixed. Further, the Tribunal has failed to consider the functional disability sustained by the claimant due to the accidental injuries



and therefore, the compensation awarded under the head of pain and suffering is also very meagre, which warrants interference.

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11. Heard the learned counsel for the appellant and perused the materials available on record.

12. The accident is not in dispute and the insurance coverage is also not in dispute. The Insurance Company has not disputed the liability fixed by the Tribunal. The claimant only has filed the present appeal against the quantum of compensation stating that the monthly income fixed by the Tribunal is not a "just compensation".

13. Admittedly, at the time of accident, the claimant was aged 23 years. Though the claimant has stated that he was working as a Driver, there is no evidence to prove the same except the oral evidence of the claimant. To prove his avocation, the claimant has produced only his driving licence. However, the accident had not occurred during driving of car or any other heavy vehicle and it occurred when the claimant was proceeding in motor-cycle bearing Regn. No.TN-32-F-1219.

14. It is not the case where the claimant was working as driver on



regular basis in a company or concern or any authority and getting monthly salary. Except the evidence of the claimant, there is no other evidence or material to prove that the claimant was working as an acting driver and was getting monthly income of Rs.15,000/- per month. In the absence of any independent oral or documentary evidence, the tribunal has rightly fixed Rs.9,000/- towards monthly income of the claimant and this Court does not find any perversity in the said findings.

15. Though the Tribunal has considered the disability certificate produced by the claimant and the evidence of the doctor/P.W.2 and adopted multiplier method, since the claimant who was aged 23 years sustained skull injuries in the accident, the Award granted by the Tribunal under the head of pain and sufferings is enhanced from Rs.30,000/- to Rs.50,000/-. Except this head, this Court does not find any reason to enhance the Award passed by the Tribunal in the other heads and the amount awarded by the Tribunal under the others heads appears to be reasonable and therefore, they need no interference by this Court.



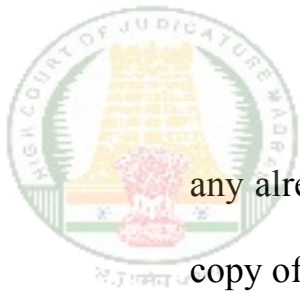
16. Accordingly, the Award passed by the Tribunal is re-worked as follows:-

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| S.No.        | Description                      | Amount awarded by the Tribunal | Amount awarded by this Court (Rs) | Award Confirmed/Enhanced/Granted/Reduced |
|--------------|----------------------------------|--------------------------------|-----------------------------------|------------------------------------------|
| 1.           | Loss of income                   | Rs.9,000/-                     | Rs.9,000/-                        | Confirmed                                |
| 2            | Transport Expenses               | Rs.2,000/-                     | Rs.2,000/-                        | Confirmed                                |
| 3            | Extra Nourishment                | Rs.3,000/-                     | Rs.3,000/-                        | Confirmed                                |
| 4            | Damages for clothes and Articles | Rs.500/-                       | Rs.500/-                          | Confirmed                                |
| 5            | Medical Expenses                 | Rs.52,500/-                    | Rs.52,500/-                       | Confirmed                                |
| 6            | Pain and Sufferings              | Rs.30,000/-                    | <b>Rs.50,000/-</b>                | <b>Enhanced</b>                          |
| 7            | Disability                       | Rs.15,000/-                    | Rs.15,000/-                       | Confirmed                                |
| 8            | Loss of earning power            | Rs.97,200/-                    | Rs.97,200/-                       | Confirmed                                |
| <b>Total</b> |                                  | <b>Rs.2,09,200/-</b>           | <b>Rs.2,29,200/-</b>              | <b>Enhanced</b>                          |

17. Accordingly, the Award of the Tribunal is modified by enhancing the compensation amount from Rs.2,09,200/- to Rs.2,29,200/-

18. The appellant/Insurance Company is directed to deposit the modified award amount, to the credit of M.C.O.P. No.279 of 2016 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge Court), Erode, with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, as awarded by the Tribunal, less the amount if



any already deposited, with a period of six weeks from the date of receipt of copy of this order.

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19. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, based on the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

20. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount.

21. In the result, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs in the present appeal.

22.09.2023

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



C.M.A.No.120 of 20



To

1.The Motor Accidents Claims Tribunal  
(Special Subordinate Judge),  
Coimbatore.

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



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C.M.A.No.120 of 2018



**P.VELMURUGAN. J.**

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