



C.M.A.No.589 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.589 of 2022

M.Ganapathy

... Appellant

Vs.

1.A.M.V.J Bus Transports,
N.A.15, K.N.K Road, Erode Post,
Erode District-638 003.

2.M/s.United India Insurance Co., Ltd.,
T.P.HUB, Sri Ranga Complex, 1st Floor,
Peramanur Main Road, Peramanur,
Salem-636 007.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to allow this appeal and enhance the award in the judgement and decree dated 31.01.2020, made in M.A.C.T.O.P.No.248 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal / Special Subordinate Judge No.I, Salem.

For Appellant : Mr.C.Baraneedharan
For Respondents : No Appearance for R1
M/s.I.Malar for R2



JUDGMENT

The Appeal has been filed by the appellant for enhancement of the award in the judgement and decree dated 31.01.2020, made in M.A.C.T.O.P.No.248 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal / Special Subordinate Judge No.I, Salem.

2. According to the claimant, on 10.09.2016, while the claimant was travelling in a bus from Salem to Erode, a private bus driven by its driver in a rash and negligent manner dashed against the bus, in which the claimant was travelling causing the claimant grievous injuries. The claimant was a driver cum agriculturist and was earning a sum of Rs.7,500/- as income per month. After the accident, due to the injuries suffered by him, he was unable to do his work as before and therefore, he filed the claim petition, claiming a sum of Rs.5,00,000/- as compensation before the tribunal. The first respondent, the owner of the private bus remained ex parte and the claim petition was contested by the second respondent / Insurance Company.

3. The second respondent / Insurance Company in its counter denied all the averments made in the claim petition apart from questioning the negligence,



quantum as well as liability. Before the claims tribunal, the claimant examined himself as P.W.1 and marked Ex.P1 to Ex.P10. On the side of the respondents, neither any documentary evidence was filed nor any oral evidence was adduced. Ex.C1 and Ex.C2 were marked as Court documents. The tribunal on assessment of the entire evidence on record, awarded Rs.2,97,649/- along with 7.5% interest as compensation. Aggrieved by the compensation awarded by the claims tribunal, the claimant has preferred the above appeal.

4.Learned counsel for the appellant submitted that the claimant suffered 25% permanent disability and was awarded Rs.3,000/- for 1% of disability. Since the accident is of the year 2016, the claims tribunal ought to have awarded Rs.5,000/- for 1% of disability. The learned counsel submitted that the order of the tribunal on the heads of transportation charges, extra nourishment and attender charges were very meager, considering the nature of injuries sustained by the claimant and the period of hospitalization undergone by him. The counsel therefore, pleaded that the compensation had to be enhanced.

5.Learned counsel appearing for the 2nd respondent on the other hand, submitted that the award of the tribunal was fair and just and did not call for any



interference in the appeal.

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6. I have heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

7. It is seen that the claimant was aged 49 years at the time of the accident and according to the disability certificate, Ex.C1, the claimant suffered open type II fracture, fracture in middle third right clavicle and scapula body and fracture of proximal 3rd shaft of humerus. The tribunal assessed the disability at 25% and awarded Rs.3,000/- for 1% of the disability. This Hon'ble Court in ***M.Chinathambi vs. S.Deepa and another***, reported in ***2020 (1) TN MAC 617***, fixed Rs.5,000/- for 1% of the disability for the accident which occurred in 2016. Since the accident in issue occurred in the year 2016, Rs.5,000/- is fixed towards 1% of disability. The claimant is therefore, entitled to Rs.1,25,000/- towards permanent disability. It is seen that the claimant was hospitalized for 7 days between 10.09.2016 to 16.09.2016, which is evidenced by Ex.P2, the discharge summary. Considering the nature of injuries and the period of treatment undergone by the claimant, I am of the view that the compensation towards transportation charges, extra nourishment and attender charges can be enhanced.



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8. In light of the above discussions, the award of the tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Awarded by Claims Tribunal</i>	<i>Award by this Court</i>
1.	Compensation for pain and suffering	Rs.25,000/-	Rs.30,000/-
2.	Loss of earnings	Rs.37,500/-	Rs.37,500/-
3.	Medical expenses	Rs.96,649/-	Rs.96,649/-
4.	Transportation charges	Rs.12,500/-	Rs.15,000/-
5.	Extra nourishment	Rs.12,500/-	Rs.15,000/-
6.	Attender charges	Rs.12,500	Rs.15,000/-
7.	Damages to clothings	Rs.1,000/-	Rs.1,000/-
8.	Loss of amenities	Rs.25,000/-	Rs.27,500/-
9.	Compensation for permanent disability	Rs.75,000/-	Rs.1,25,000/-
	Total	Rs.2,97,649/-	Rs.3,62,649/-

9. The award of the Tribunal is therefore modified and the claimant is awarded a sum of Rs.3,62,649/- as compensation along with 7.5% interest.

10. It is submitted by the learned counsel for the appellant that the Insurance Company has not deposited the compensation awarded by the tribunal. Therefore, this Court directs the 2nd respondent / Insurance Company to deposit the enhanced compensation of Rs.3,62,649/- along with 7.5% interest, less the amount, if any,



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N.MALA, J

Anu

already deposited within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant shall be entitled to withdraw the same by making proper application before the tribunal.

11.The Civil Miscellaneous Appeal is partly allowed and there shall be no order as to costs in this appeal.

26.06.2023

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Speaking Order: Yes/No

Index: Yes/No

NCC:Yes/No

To

1.The Motor Vehicle Accident Claims Tribunal / Special Subordinate Judge No.I,
Salem

2.The Section Officer,
V.R. Section,
High Court, Madras.

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