



C.M.A.No.941 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.941 of 2021

S.Sahul Hameed

... Appellant

Vs.

1. S.M.Thaiybu

2. The HDFC ERGO General Insurance Company Limited,

528, Anna Salai,

Chennai – 600 002.

...

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 28.02.2020 made in M.C.O.P.No.963 of 2014 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : No Appearance [R1]

Mr.K.Poomalai [R2]

JUDGMENT

Aggrieved by the compensation granted by the Motor Accident



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Claims Tribunal (III Additional District Judge), Poonamallee in
M.C.O.P.No.963 of 2014 , the claimant is before this Court.

2. Though the notice was served on the first respondent, no one appeared on his behalf. Considering the period of pendency of this appeal, the same is disposed of based on the materials available on records.

3. It is the case of the claimant that on 18.06.2014, at about 12.30 hours, when the petitioner was travelling as an occupant in the car belonging to the first respondent bearing Registration No.TN 13 5789, at that time, the driver of the said car has driven the car in a rash and negligent manner and hit the E.B. Post, thereby caused the accident, due to which, the petitioner sustained multiple injuries. Claiming compensation in a sum of Rs.10,00,000/- from the respondents the claimant has filed the claim petition.

4. Before the Tribunal, the claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.11. No witnesses were examined nor any



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documents were marked on the side of the respondents and the Court Document Ex.X.1 has been marked by the Tribunal. After considering all the oral and documentary evidence, the Tribunal, awarded a sum of Rs.3,47,204/- as compensation to the claimant. Not satisfied with the quantum of compensation, the appellant/claimant is before this Court.

5. The learned counsel appearing for the appellant / claimant submitted that, the Tribunal had held that the appellant had sustained 36% disability as per Ex.X.1. Though as per the existing law, at the relevant point of time, per percentage of disability is Rs.4,000/-, however, the Tribunal had awarded a sum of Rs.1,80,000/- under the head “permanent partial disability” by fixing a sum of Rs.3,000/- per percentage of disability, which requires to be reconsidered. Accordingly, he prays for enhancement of compensation under the said head and the other heads awarded by the Tribunal are also on the lower side and the same requires interference of this Court.

6. Per contra, the learned counsel appearing for the second respondent / insurer of the car submitted that, the Tribunal had fixed the



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per percentage of disability at a sum of Rs.3,000/-, which is just and reasonable and so also the compensation awarded under the other heads, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not in dispute. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. It is borne from the award passed by the Tribunal that the Medical Board opined that due to the injuries sustained by the appellant, he had suffered 36% disability. By accepting the report of the Medical Board, viz., Ex.X.1, the Tribunal had erroneously fixed a sum of Rs.3,000/- per percentage of disability, even though, at the relevant point of time, per percentage of disability is Rs.4,000/-, hence, the same has to be enhanced. Therefore, the amount under the head of



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"permanent partial disability" stands enhanced to a sum of Rs.1,44,000/- (36 x Rs.4,000/- = Rs.1,44,000/-). Since no compensation has been awarded by the Tribunal under the head "loss of income", this Court is inclined to fix a sum of Rs.15,000/- during the treatment period under the said head. Further, this Court finds that the compensation awarded under other heads are just and reasonable and the same does not require any interference.

9. In view of the above, the compensation awarded by the Tribunal 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	Disability (36%)	1,08,000/-	1,44,000/- (enhanced)
2	Transportation	10,000/-	10,000/-
3	Medical expenses	1,47,954/-	1,47,954/-
4	Attendant's charges	2,250/-	2,250/-
5	Pain and Suffering	54,000/-	54,000/-
6	Extra Nourishment	25,000/-	25,000/-
7	Loss of Income	-	15,000/-
	Total	3,47,204/-	3,98,204/-

10. Accordingly, the appeal is allowed in part and the impugned



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award of the Tribunal is modified enhancing the compensation amount from **Rs.3,47,204/-** to **Rs.3,98,204/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.963 of 2014 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (deducting the interest for the default period from 18.06.2018 to 04.09.2018) and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the award amount, less, the amount, if any already withdrawn. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimant. There shall be no order as to costs in the present appeal.

20.12.2023

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



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To

- 1.Motor Accident Claims Tribunal (III Additional District Judge),
Poonamallee.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

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