



C.M.A. No. 1849 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1849 of 2021

Sudhakar

... Appellant / Petitioner

Vs.

1. Sivakumar

2. Bharti AXA General Insurance
Company Limited,
2nd Floor, Metro Plaza,
No.162, Anna Salai,
Chennai -2.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 25.10.2019 passed in M.A.C.T.O.P. No. 3127 of 2015 on the file of the II Special Sub Judge, Motor Accident Claims Tribunal, Special Sub Court -2 for Motor Accident Claims Petitions, Small Causes Court, Chennai.

For Appellant	:	M/s. M. Malar
For R1	:	Dispensed With
For R2	:	No Appearance



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JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.A.C.T.O.P. No.3127 of 2015, dated 25.10.2019 on the file of the II Special Sub Judge, Motor Accident Claims Tribunal, Special Sub Court -II for Motor Accident Claims Petitions, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 30.12.2014 at about 23:30 Hours, the claimant was riding his two wheeler bearing Registration No.TN-07-AB-8839 on Kathanchavadi R.G. Salai service road, while he reached near Prince Tower, an auto bearing Registration No.TN-04-U-0650 driven by its driver in rash and negligent manner, hit against the two wheeler of the claimant causing grievous injuries to the claimant. A criminal case was also registered against the auto driver in Cr.No.1087/S1/2014 on the file of the J3, Guindy Traffic Investigation, Chennai. Due to the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a



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sum of Rs.10,00,000/- along with interest under section 166 of Motor Vehicles Act, 1988.

4. The first respondent is the owner of the auto bearing Registration No.TN-04-U-0650 has not contested the claim and remained ex-parte. The second respondent - insurance company is the insurer of the first respondent auto has filed a counter and denied the manner in which the accident has taken place and also disputed the age, occupation, income and the disability of the claimant. The insurance company also contended that the accident was taken place due to the negligence on the part of the claimant and also denied the validity of insurance policy to the auto at the time of occurrence. The insurance company also contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.14 were marked, on the side of the respondent, no witnesses were examined and no exhibits were marked.



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6. Based on the evidence placed on record, the Tribunal in point No.1, has held that the rash and negligence on the part of the driver of the auto bearing Registration No.TN-04-U-0650 is responsible for the accident. In point nos. 2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.67,409/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay the compensation to the claimant.

7. Aggrieved over the compensation awarded by the Tribunal, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the compensation awarded under the head disability is on the lower side. According to her, the claimant has sustained two fractures in cerepitus left clavicle and cerepitus right big toe, hence the Doctor has assessed the disability of the claimants as 20% but the Tribunal without giving any



reason has fixed the disability as 5% and awarded Rs.3,000/- per percentage of disability.

9. In this case, the evidence of the P.W.2 - Doctor, who assessed the disability of the claimant shows that there are various complications sustained by the claimant, subsequent to the accident, these complications has not been properly adverted by the Tribunal. Without giving any reasoning, the Tribunal has reduced the percentage of disability. This Court is of the view the reduction of percentage of disability by the Tribunal is not proper and accepts the 20% disability assessed by the P.W.2. This Court judgment in *M. Chinnathambi vs. S. Deepa and another* reported in [CDJ 2020 MHC 1013; 2020 (1) TNMAC 617] has held that due to paucity of time, the compensation awarded under percentage of injury method in the year 2014 and 2015 has fixed Rs.4,000/- per percentage of injury, hence, this Court is of the view that Rs.4,000/- per percentage of disability in this case is proper, accordingly, Rs.80,000/- (Rs.4,000/- x 20% (disability)) is awarded under the head disability.



10. The Tribunal has awarded Rs.5,000/- each under the heads loss of amenities, transportation charges and pain and suffering. This Court is of the view the compensation under the above heads are on the lower side, hence inclined to modify the same as Rs.15,000/- for loss of amenities, Rs.10,000/- towards transportation charges and Rs.15,000/- towards pain and suffering. As far as the other heads are concerned, the Tribunal has awarded just compensation and the same is hereby confirmed.

11. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability	15,000/-	80,000/-	Enhanced
2.	Pain and Sufferings	5,000/-	15,000/-	Enhanced
3.	Transport expenses	5,000/-	10,000/-	Enhanced
4.	Extra Nourishments	5,000/-	5,000/-	Confirmed
5.	Damages to articles	1,000/-	1,000/-	Confirmed
6.	Attender charges	5,000/-	5,000/-	Confirmed
7.	Loss of amenities	5,000/-	15,000/-	Enhanced
8.	Loss of expectation of life	1,000/-	1,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
9.	Loss of income	24,000/-	24,000/-	Confirmed
10.	Medical expenses	1,409/-	1,409/-	Confirmed
	Total Compensation	67,409/- 67,500/- (round off)	1,57,409/-	Enhanced

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.67,500/- is hereby enhanced to **Rs.1,57,409/- [Rupees One Lakh Fifty Seven Thousand Four Hundred and Nine only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent -Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.A.C.T.O.P.No.3127 of 2015 on the file of the II Special Sub Judge, Motor Accidents Claims Tribunal, Special Sub Court -II for Motor Accident Claims Petitions, Small Causes Court, Chennai. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court



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along with interest and costs, less the amount if any, already withdrawn.

The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

21.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge,
Motor Accident Claims Tribunal,
II Court of Small Causes, Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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