



C.M.A.No.3646 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

Civil Miscellaneous Appeal No.3646 of 2021

K. Selvamani ... Appellant/petitioner  
Vs.

1. E. Yovan Doss  
2. The New India Assurance Co., Ltd.,  
No.45, 2<sup>nd</sup> Line Beach,  
Moores Street,  
Chennai – 600 001. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 23.10.2018, made in M.C.O.P.No.2276 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : M/s. Ramya V. Rao  
For R1 : No appearance  
For R2 : Mr. Vinod



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## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the Award passed in M.C.O.P.No.2276 of 2014, dated 23.10.2018, on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3.The petitioner has sustained fracture while he was riding his two-wheeler bearing Registration No.TN 07 BK 0455 on 12.04.2013 at about 08.45 hours at E.C.R.Road. While he reached opposite to Thiruvanmiyur Marutheeswarar Koil, a Car bearing Registration No.TN 10 R 6135 came in rash and negligent manner and hit on the two-wheeler, resulting which, the petitioner sustained grievous injuries. Subsequently, he has filed claim petition claiming compensation of Rs.7,00,000/- for the injuries sustained by him in the road accident.



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4. The first respondent being the owner of the car has not contested the claim and was remained ex-parte. The second respondent disputed the claim and contended that the petitioner has to prove the disability sustained by him and also disputed that the petitioner has also prove the age, avocation and income. In any event, the compensation claimed by the petitioner is on the higher side. Hence prays to dismiss the claim.

5. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.2,15,622/- rounded off at Rs.2,15,700/- as compensation to the petitioner.

6. Aggrieved over the quantum of compensation awarded, the claimant has filed this appeal only on the ground that the Tribunal has reduced the disability without reasons and which is not proper.

7. It is submitted by the learned counsel for the claimant that the Tribunal has not properly awarded compensation under the head disability and also considering the nature of the injury the compensation



awarded under the head loss of earnings shall also to be increased and prays to enhance the compensation.

8. The learned counsel for the Insurance Company had opposed the same and stating that the Tribunal after considering the evidences placed on record has rightly awarded just and reasonable compensation and there is no need for interference of the same and prays to confirm the award.

9. I have considered the rival submissions made on both sides and also perused the materials placed on record.

10. The only point raised for consideration in this appeal is whether the compensation awarded under the head disability is proper or not. P.W.2 is a Private Doctor who has assessed the disability sustained by the claimant and fixed at 35% partial permanent disability. The Tribunal has not agreed with the said finding of the Doctor and fixed only 10% as disability. The Discharge Summaries Exs.P3 and P2 issued by the Malar Hospital and Kalyani Hospital respectively, shows that the injured has undergone surgery for “Lateral condyle fracture in right distal femur” and he



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has also sustained other injuries. P.W.2 has also given evidence that implates was also fixed by him and he has also further deposed that due to the injuries sustained the petitioner is facing various problems and restrictions of movements and other consequential defects.

11. Considering the facts and also considering the injuries sustained by the petitioner, this Court is of the view that fixing of disability as 10% by the Tribunal is on lower side and this Court is inclined to modify the same as 30% as assessed by the Doctor P.W.2 but the disability is not a functional disability. The claimant is not entitled to claim compensation under the head disability by applying multiplier method but only he is entitled to claim compensation by calculating percentage method and a sum of Rs.3,000/- is granted per percentage of injury. Accordingly the disability is assessed as follows:  $[3,000 \times 30\%]$  Rs.90,000/- is hereby awarded.

12. The Tribunal has fixed the notional income of the injured as at Rs.8,000/- per month and this Court is of the view that the same needs to be revised since the petitioner is a Civil Contractor and was aged about 46



years and considering the year of accident, fixing the notional income of Rs.12,000/- per month would be proper. Accordingly, this Court fixed the notional income of the injured is at Rs.12,000/-. The Tribunal has awarded a sum of Rs.24,000/- under the head loss of earnings and this Court finds the same is on the lower side since considering the nature of injuries, the claimant has undergone surgeries also and after the surgeries had done, he requires atleast four months rest period. Hence this Court is inclined to grant four months period as loss of income during the treatment period. Accordingly, a sum of Rs.48,000/- [12000 x 4] is granted under the head loss of earnings.

13. The Tribunal has also awarded a sum of Rs.10,000/- under the head loss of future prospects but this Court is of the view the same is not required in this case hence the head loss of future prospects is hereby converted in to the head loss of amenities. As far as the other heads awarded by the Tribunal is concerned, the same are just and reasonable and the same are hereby confirmed. Thus, the compensation awarded 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 granted |
|-------|----------------------------------------------|------------------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                                   | Rs.30,000/-                              | Rs.90,000/-                       | Enhanced                               |
| 2.    | Pain and sufferings                          | Rs.20,000/-                              | Rs.20,000/-                       | Confirmed                              |
| 3.    | Extra Nourishment                            | Rs.10,000/-                              | Rs.10,000/-                       | Confirmed                              |
| 4.    | Transportation                               | Rs.5,000/-                               | Rs.5,000/-                        | Confirmed                              |
| 5.    | Hospital & Medical Expenses                  | Rs.84,872/-                              | Rs.84,872/-                       | Confirmed                              |
| 6.    | Future Medical Expenses                      | Rs.30,000/-                              | Rs.30,000/-                       | Confirmed                              |
| 7.    | Attender Charges                             | Rs.1,750/-                               | Rs.1,750/-                        | Confirmed                              |
| 8.    | Loss of Earnings                             | Rs.24,000/-                              | Rs.48,000/-                       | Enhanced                               |
| 9     | Loss of Future Prospects / Loss of Amenities | Rs.10,000/-                              | Rs.10,000/-                       | Modified                               |
|       | <b>Total Compensation</b>                    | <b>Rs.2,15,622/- @<br/>Rs.2,15,700/-</b> | <b>Rs.2,99,622/-</b>              | <b>Enhanced by<br/>Rs.83,922/-</b>     |

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,15,700/- is hereby enhanced to Rs.2,99,622/- [Rupees Two Lakhs Ninety Nine Thousand Six Hundred and Twenty Two only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit excluding the default period if any. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already



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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.C.O.P.No.2276 of 2014 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimant without any formal application. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

15.12.2023

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Index : Yes / No  
Speaking Order: Yes / No  
Neutral Citation Case : Yes/No



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To

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- 1.The Special Sub Judge No.1,  
Small Causes Court,  
Motor Accidents Claims Tribunal,  
Chennai.
- 2.The Section Officer,  
VR Section,  
High Court,  
Madras.

K.RAJASEKAR,J..



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