



C.M.A.No.2632 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

**C.M.A.No.2632 of 2021**

Ganesan

... Appellant

vs.

1.Madhaiyan

2.Cholamandalam MS General Insurance Co. Ltd.,  
No.9, 1<sup>st</sup> Floor, Rajaji Road, Peramanur,  
Maravaneri Post, Salem.

3.Thenmozhi

4.Iffco-Tokio General Insurance Co. Ltd.,  
JH Towers, 2<sup>nd</sup> Floor, New No.24, Old No.302,  
L.I.C., Colony, Salem-636 004.

... Respondents

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against judgment and decree in M.C.O.P.No.815 of 2018, dated 05.01.2021 on the file of the Motor Accident Claims Tribunal / Special Sub-Court No-II, Salem.

For Appellant : Mr.Paraneedharan

For Respondents : Mrs.R.Sreevidhya [R2]  
Mr.S.Arunkumar [R4]

R1-Notice dispensed with vide  
Order dated 28.06.2023.

**JUDGMENT**



C.M.A.No.2632 of 2021

Not being satisfied by the award passed by the Motor Accident Claims Tribunal, Special Sub-Court, No.II, Salem in MCOP No.815/2008 this Civil Miscellaneous Appeal has been preferred by the appellant/claimant for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, r/w.Tamil Nadu Motor Accident Claims Tribunal Rules claiming compensation of Rs.15,00,000/- for the road accident that occurred on 28.01.2018.

3. The Tribunal after hearing both sides arguments and upon consideration of oral and documentary evidence has passed award for an amount of Rs.3,86,531/- with 7.5% interest per annum from the date of filing of the petition till date of deposit.

4. On endorsement made by the learned counsel for the appellant, notice to the 1st respondent is dispensed with.

5. The manner in which the accident had taken place is not in dispute. The learned counsel for the appellant would vehemently contend that the appellant was riding pillion in a two wheeler at the relevant point of



C.M.A.No.2632 of 2021

time, he was a proprietor of Power loom and earning Rs.22,000/- p.m. To support the said contention, Exs.P13 to P16 have been marked and the Tribunal has fixed the notional income at Rs.8,000/- p.m. is less. He would further contend that the appellant suffered fracture of right femur and he was in hospital for a period of about 17 days. He would further contend that the amount awarded for pain and suffering, loss of amenities and for attender charges are insufficient considering the injuries suffered by the appellant herein and prayed for enhancement of compensation.

6. Per contra, the learned counsel appearing for the Insurance Company would rather contend that the Tribunal after taking into consideration of oral and documentary evidence has passed an award appears to be reasonable and needs no interference.

7. The main grievance of the appellant is that the notional income fixed by the Tribunal is less. It is the evidence of PW1 -appellant that he has been running a power loom and earning Rs.22,000/- p.m. In this regard, Ex.P14 and Ex.P15 namely note book containing the details of power loom activities have been marked. Of course, from the said note book, it can be discernible that he was running a power loom. To that extent, the said documents can be relied upon. The date of accident is



C.M.A.No.2632 of 2021

28.01.2018. This Court deems fit to fix the income of Rs.14,000/- p.m.

WEB COPY

8. It can be seen from the discharge summary Ex.P8 and Ex.P9 that the appellant got admitted twice in the hospital and was given treatment as inpatient for about 17 days for the fracture suffered on his right femur – thigh bone on account of the accident. Relying upon the above said details, loss of income for four months Rs.56,000/- (Rs.14,000/- X 4 months) is granted. Considering the fracture suffered by the appellant, for attender charges, an amount of Rs.10,000/- is granted in addition to the amount already granted by the Tribunal. The amount awarded towards pain and suffering and loss of amenities are appears to be reasonable. Therefore, in all other aspects, the amounts awarded by the Tribunal appears to be very reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

| <b>Sl. No.</b> | <b>Description</b>       | <b>Amount awarded by Tribunal</b> | <b>Amount awarded by this Court</b> | <b>Award confirmed or enhanced or granted or reduced</b> |
|----------------|--------------------------|-----------------------------------|-------------------------------------|----------------------------------------------------------|
| 1              | For Permanent Disability | Rs. 75,000/-                      | Rs. 75,000/-                        | <b>Confirmed</b>                                         |
| 2              | For Pain and Sufferings  | Rs. 20,000/-                      | Rs. 20,000/-                        | <b>Confirmed</b>                                         |
| 3              | For Loss of Amenities    | Rs. 20,000/-                      | Rs. 20,000/-                        | <b>Confirmed</b>                                         |
| 4              | For Medical Expenses     | Rs.1,72,531/-                     | Rs.1,72,531/-                       | <b>Confirmed</b>                                         |



C.M.A.No.2632 of 2021

| <b>Sl. No.</b> | <b>Description</b>     | <b>Amount awarded by Tribunal</b> | <b>Amount awarded by this Court</b> | <b>Award confirmed or enhanced or granted or reduced</b> |
|----------------|------------------------|-----------------------------------|-------------------------------------|----------------------------------------------------------|
| 5              | For Loss of Income     | Rs. 48,000/-                      | Rs. 56,000/-                        | <b>Enhanced</b>                                          |
| 6              | For Transport Expenses | Rs. 20,000/-                      | Rs. 20,000/-                        | <b>Confirmed</b>                                         |
| 7              | For Extra Nourishment  | Rs. 20,000/-                      | Rs. 20,000/-                        | <b>Confirmed</b>                                         |
| 8              | For Attender Charges   | Rs. 10,000/-                      | Rs. 20,000/-                        | <b>Enhanced</b>                                          |
| 9              | For Damages to Clothes | Rs. 1,000/-                       | Rs. 1,000/-                         | <b>Confirmed</b>                                         |
|                | <b>Total</b>           | <b>Rs.3,86,531/-</b>              | <b>Rs.4,04,531/-</b>                |                                                          |

9. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.3,86,531/-** to **Rs.4,04,531/-** which would carry interest at the rate of 7.5% per annum.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.3,86,531/-** to **Rs.4,04,531/-**.

(iii) The 2<sup>nd</sup> respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.4,04,531/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of



C.M.A.No.2632 of 2021

M.C.O.P.No.815 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub-Court, No-II, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made on filing of cheque petition, the appellant / claimant is at liberty to withdraw the same. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

30.06.2023

Index : Yes/No  
Speaking / Non-speaking order  
ssn

**R.KALAIMATHI, J.,**

ssn

To:

6/7



C.M.A.No.2632 of 2021

1. The Motor Accident Claims Tribunal,  
Special Subordinate Judge No-II, Salem.

WEB COPY

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

**C.M.A.No.2632 of 2021**

**30.06.2023**