



C.M.A.No.1137 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1137 of 2021

Nisanth

... Appellant / petitioner

Vs.

1. Sivakumar

[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. M/s. The Oriental Insurance Co., Ltd.,
Represented by its Divisional Office,
Divya Towers,
Fort Main Road,
Salem – 1.

3. O. R. Karthik Babu

[R3 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]

4. M/s. United India Insurance Co.,Ltd.,
Represented by its Divisional Office – II (HUB),
104-A, Peramanoor Main Road,
Salem – 7.

... Respondents/Respondents



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 25.09.2020, made in M.C.O.P.No.1316 of 2019, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Salem.

For Appellant : Mr. M. Guruprasad
For R1 & R3 : Ex-parte
For R2 : No appearance
For R4 : Mr. E. Rajadurai
For Mr. M. B. Gopalan Associates

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation of the Award passed in M.C.O.P.No.1316 of 2019, dated 25.09.2020, on the file of the Motor Accidents Claim Tribunal, Special Sub Court No.1, Salem.

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

3. The case of the claimant is that on 23.03.2019 at about 5.45 p.m., the petitioner was travelling as a pillion rider on a motor-cycle bearing Registration No.TN 58 S 6005 on the Pollachi to Coimbatore main road,



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while they reached near Malumitchampatti Junction, a lorry bearing Registration No.TN 42 Q 7423, which was driven by its driver in rash and negligent manner dashed against the motor-cycle and caused accident. Due to which, the petitioner had sustained grievous injuries all over the body and immediately, he had taken to Sree Abirami Hospital, Coimbatore and undergone treatment. A criminal case has been registered against the driver of the lorry in Crime No.57 of 2019 under Sections 279 and 337 IPC on the file of the Chettipalayam Police Station.

4. The first and third respondents who are owners of two-wheeler and lorry respectively have not contested the claim and were remained ex-parte before the Tribunal.

5. The second respondent is the insurer of the lorry has contested the claim filed counter and contended that the accident was not occurred due to the negligent act of the driver of the lorry and the claim made under various heads are higher side and since the lorry driver is not responsible for the accident, the Insurance Company is not liable to pay the



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compensation and prays to dismiss the claim petition.

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6. The fourth respondent is the insurer of the two-wheeler filed counter and contended that due to rash and negligent driving of the driver of the lorry is responsible for the accident and that a criminal case was also registered against the driver of the lorry and the policy is also liability only policy and that the fourth respondent is not liable to pay any compensation and prays to dismiss the claim petition.

7. Before the Tribunal, on side of the claimant P.W.1 was examined and Exs.P1 to P15 were marked. On the side of the second and fourth respondents no oral and documentary evidence marked. The Disability Certificate issued by the Omalur Medical Board was marked as Ex.C1 and X-ray was marked as Ex.C2.

8. The Tribunal based on the evidence placed on record, in Point No.1 has held that the negligent act of the driver of the first respondent is responsible for causing injuries to the claimant. In Point No.2, the



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Tribunal has held that the second respondent is liable to pay the compensation to the claimant. In Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.9,74,219/- as compensation payable to the claimant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization.

9. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimant has approached this Court seeking enhancement of compensation. The Insurance Company has not filed any appeal challenging the liability fixed on them.

10. The learned counsel for the claimant submitted that the claimant/injured was sustained severe crush injuries on right thigh with vascular injury femoral artery with severe contamination raw area thigh and the injured has sustained permanent functional disability which has not been properly appreciated by the Tribunal while awarding compensation and the Tribunal has only awarded Rs.3,000/- per percentage of injury by treating the disability as a temporary disability. The Tribunal has not considered the



loss of earning capacity of the injured hence prays to award compensation under the head loss of earning capacity. He has also submitted that the compensation awarded under various heads is also on the lower side and prays to modify the same.

11. Per Contra, the learned counsel for the fourth respondent submitted that eventhough the award is not against the fourth respondent and the compensation awarded by the Tribunal under various heads is just and proper and prays to confirm the same.

12. I have considered the rival submissions made on the contesting parties and also perused the entire records.

13. Ex.P9-Discharge Summary issued by Sree Abirami Hospital Private Limited, Coimabatore, wherein, it is recorded as follows: *“crush injury right thigh with vascular injury (femoral Artery) & severe contamination” and the procedure adopted as follows: “(1) Emergency Femoral Artery Reconstruction with Venos Grafting with Wound Debridement. (2) Crush Injury - Right Thigh, Wound Debridement done.*



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14. The claimant was admitted into the hospital as in-patient on 23.03.2019 and was discharged on 12.04.2019. Subsequently, he was admitted in Sri Sakthi Nursing Home, Erode from 12.04.2019 and undergone in-patient treatment till 26.04.2019. The Discharge Summary issued by Sri Sakthi Nursing Home, Erode was marked as Ex.P10. The claimant was also referred before the Medical Board for assessing the disability and the Medical Board has assessed him the disability as 25% and the nature of the disability has been recorded as permanent disability. The present clinical features of the claimant is recorded as follows: He has difficulty in squatting and sitting cross legged pain in right thigh knee with Parasthesia. The Tribunal after noting the nature of injuries and also the Disability Certificate has held that the injuries sustained by the claimant is not a functional disability and adopted percentage method by awarding Rs.3,000/- per percentage of injury and accordingly the compensation for a sum of Rs.75,000/- (3000 x 25%) was awarded under the head of 'Permanent Disability'.

15. On perusal of Discharge Summary and Disability



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Certificate shows that the claimant has sustained crush injury on right thigh and fortunately he had not suffered any fracture. However several plastic surgeries and reconstruction of femoral artery with venous skin grafting and wound debridement was done. Subsequently, these injuries were healed and it has not resulted in any permanent disability. However, this injury has caused disfigurement on right thigh. Discharge Summary also shows that skin grafting was done on right thigh. The Disability Certificate stated that the claimant is having difficulty in squatting and sitting cross legged pain in right thigh knee with paresthesia and shows that the injury has been healed and there is no functional permanent disability sustained.

16. Under the said circumstances, this Court is of the view that adopting percentage method for granting compensation under the head permanent disability is proper and case of the claimant is not falling within any of the guidelines warranting grant of compensation under the head loss of earning capacity as held by the Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***. The Tribunal has awarded only Rs.3,000/- per percentage and as per the norms followed by this Court, per percentage to be



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enhanced, accordingly, considering the year of accident Rs.6,000/- per injury is hereby awarded. Accordingly, Rs.1,50,000/- [6000 x 25%] is hereby awarded under the head 'Disability'. The Tribunal has awarded a sum of Rs.25,000/- for the head 'pain and sufferings' and this Court is of the view that the claimant has undergone several medical procedures including wound debridement and skin harvesting. He has undergone in-patient treatment for more than 35 days hence the compensation awarded under the head pain and sufferings is to be enhanced to Rs.75,000/-. Considering the nature of injuries sustained by the claimant, this Court is inclined to grant Rs.30,000/- under the head 'Extra Nourishment'.

17. The Tribunal has awarded a sum of Rs.22,500/- under the head 'for loss of income of the parents of the claimant' on the ground that his parents have lost income and this Court is of the view that, since the claimant herein is aged about 37 years and he was the only earning member of the family, the loss of income has to be granted only to the claimant not to his parents accordingly, the compensation awarded under the head 'loss of income of the parents of the injured is to be rejected. The Discharge



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Summary shows that the claimant had taken in-patient treatment for 35 days and subsequently also he has undergone regular treatment as per exhibits produced. Accordingly, this Court is of the view that the loss of income for the injuries sustained by him during the treatment period is to be calculated for 5 months accordingly, Rs.50,000/- awarded by taking Rs.10,000/- as notional income of the injured. The claimant has also marked photographs of the injury as Ex.P13 which shows disfigurement in both legs and also the crush injury hence the claimant is also entitled to get Rs.25,000/- as additional compensation for the head 'Loss of Amenities and comfort'. As far as the compensation awarded under other heads are concerned, this Court finds the same is just and reasonable and the same is hereby confirmed.

18. 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 or reduced
1.	Pain and sufferings	Rs.25,000/-	Rs.75,000/-	Enhanced
2.	Medical Expenses	Rs.7,55,719/-	Rs.7,55,719/-	Confirmed
3.	Transportation Charges	Rs.15,000/-	Rs.15,000/-	Confirmed



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4.	Nutrition Charges / Extra Nourishment	Rs.15,000/-	Rs.30,000/-	Enhanced
5.	Attender Charges	Rs.15,000/-	Rs.15,000/-	Confirmed
6.	Damages to clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
7.	Loss of Amenities and comfort	Rs.50,000/-	Rs.75,000/-	Enhanced
8.	Permanent Disability	Rs.75,000/-	Rs.1,50,000/-	Enhanced
9.	Loss of income of the parents of the claimant	Rs.22,500/-	---	Rejected
11.	Loss of income during treatment period	---	Rs.50,000/-	Awarded
	Total	Rs.9,74,219/-	Rs.11,66,719/-	Enhanced by Rs.1,92,500/-

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.9,74,219/- is hereby enhanced to Rs.11,66,719/- [Rupees Eleven Lakhs Sixty Six Thousand Seven Hundred and Nineteen 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. 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 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.1316 of 2019, on the file of the Motor Accidents Claims



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Tribunal, Special Sub Court No.1, Salem. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate 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. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay 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.

18.10.2023

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

To

1.The Special Sub Judge No.1,
Motor Accidents Claims Tribunal,

12/14



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2.The Section Officer,
VR Section, High Court,
Madras.

K.RAJASEKAR,J.

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