



C.M.A. No. 1937 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1937 of 2021

J. Sudhahar

... Appellant / Petitioner

Vs.

1. Rajagopal

2. United India Insurance Co. Ltd.,
31/11, First Floor, Raghavan Complex,
Vellala Theru, Ariyalur 621704.

3. Selvam

4. Oriental Insurance Company Ltd.,
73/B1 Salai Road, Lakshmi Complex,
Thillai Nagar,
Trichy 620018.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 04.01.2021 passed in M.C.O.P. No. 119 of 2018 on the file of the Additional Sub Judge, Motor Accident Claims Tribunal, Ariyalur.



C.M.A. No. 1937 of 2021

For Appellant : Mr. S. Udhyakumar
For R1 and R3 : No Appearance
For R2 : M/s. I. Malar
For R4 : Mr. P. Kandasamy

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimants seeking enhancement of compensation awarded in M.C.O.P. No. 119 of 2018, dated 04.01.2021 on the file of the Additional Sub Judge, Motor Accident Claims Tribunal, Ariyalur.

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 25.05.2018 at about 12:30 Hours, the claimant was riding a Bajaj Discover two wheeler bearing Registration No.TN-61-E-1867 from Ariyalur to Sendurai Main road, while he reached near Ramco Petrol Bunk, a Yamaha motor cycle bearing Registration No. TN-61-H-1282 belongs to the first respondent, ridden by its rider in rash and negligent manner has suddenly turned his two wheeler on



the right side of the road, thereby the claimant colluded with that two wheeler and both fell down. At that time, a LMV car bearing Registration No.TN-61-D-2562 came at high speed in rash and negligent manner hit on the claimant, due to which, the claimant has sustained grievous injuries all over the body. A criminal case was also registered against the drivers of the first respondent and third respondent vehicles in Cr.No.210/2018 u/s. 279, 337 of I.P.C. on the file of the Ariyalur Police Station. Due to injuries sustained, the claimant has come forward with a claim petition seeking compensation from the respondents for a sum of Rs.10,00,000/- along with interest under Section 140 and 166 of Motor Vehicles Act and Rule 24 of the Tamil Nadu Motor Accidents Claims Tribunal Rules.

4. The first respondent is the owner and the second respondent is the insurer of the Yamaha two wheeler bearing Registration No. TN-61-H-1282. The third respondent is the owner and the fourth respondent is the insurer of the LMV car bearing Registration No.TN-61-D-2562. The first and third respondent have not contested the claim petition and remained ex-parte.



5. The second respondent – insurance company, who is the insurer of the first respondent Yamaha two wheeler bearing Registration No. TN-61-H-1282 has filed a counter, contended that the accident was taken place only due to the negligence on the part of the claimant, who fell down from his two wheeler and got hit by the third respondent LMV car bearing Registration No. TN-61-D-2562, hence the claimant is only entitled to claim compensation from third and fourth respondent, who are the owner and insurer of the LMV car.

6. The fourth respondent, who is the insurer of the third respondent LMV car filed a counter and disputed the manner in which the accident has taken place and also contended that the claimant's Bajaj Discover two wheeler has no valid insurance policy at the time of occurrence and the claimant has rode the two wheeler in rash and negligent manner and hit on the first respondent two wheeler, who suddenly turned right side of the road. If both the claimant and first respondent two wheelers have not dashed, the accident would not have taken place and further contended that the third and fourth respondent are not liable to pay any compensation to the claimant.



7. Before the Tribunal, the claimant himself was examined as P.W.1 and Exs.P.1 to P.12 were marked. On the side of the respondents, R.W.1 was examined and no exhibits were marked. The disability certificate of the claimant was marked as Ex.C.1.

8. 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 rider of the Yamaha two wheeler bearing Registration No.TN-61-H-1282 and driver of the LMV car bearing Registration No.TN-61-D-2562 are jointly responsible for the accident and causing injuries to the claimant. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.1,75,310/- along with interest @ 9% from the date of filing of petition till the date of realization and the Tribunal also directed the second and fourth respondent insurance companies to pay the compensation (50% each) to the claimant.

9. Aggrieved over the quantum of compensation, the claimant has come forward with this appeal seeking enhancement of compensation. The Respondents have not filed any appeal challenging the award.



10. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly fixed the compensation towards the disability, pain and suffering, extra nourishment and transportation expenses and also submitted that the claimant has sustained multiple grievous injuries at the time of accident but the Tribunal has not considered the same and granted a very meagre compensation, which is not a just compensation, hence prays to enhance the compensation.

11. Per contra, the learned counsels appearing for the second and fourth respondent insurance companies have submitted that the Tribunal based on the evidence placed on record has fixed a just compensation, hence prays to confirm the same.

12. Heard the submissions made on both sides and perused the materials placed on record:

13. The Tribunal has awarded compensation under the head disability based on Ex.C.1, the disability certificate issued by the Ariyalur District Medical Board, who assessed the disability of the claimant and fixed



the disability as 24% and has adopted percentage method and awarded Rs.3,000/- per percentage of disability by following the dictum laid down in the judgment of *National Insurance Co. Ltd., Erode vs G.Ramesh and another reported in [2013 (2) TN MAC 583]*. The claimant herein has sustained both bone fracture on his right leg. He claimed, he is a driver by profession but he was not able to prove his employment. the nature of injury sustained is also healed and the Tribunal has held that there is no loss of earning capacity. The Tribunal has also analysed the case of the claimant by following the guidelines of Apex Court judgment in *Raj Kumar vs. Ajay Kumar [2011 (1) SCC 343]*. Before this Court, the claimant has not contended that he has suffered functional disability which resulted in causing loss of earning capacity.

14. This Court judgment in *M. Chinnathambi vs. S. Deepa and another* reported in *[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]*, has awarded Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016 onwards, hence, considering the date of accident, age of the claimant, this Court is inclined to modify the award of Rs.3,000/- per percentage of disability by the Tribunal to Rs.5,000/-, hence the total



compensation granted under the disability is modified to Rs.1,20,000/- (Rs.5,000/- x 24% of disability).

15. On perusal of the Ex.P.9, the discharge summary and Ex.P.10, the wound certificate, which shows that the claimant has sustained severe injuries all over the body and also sustained both bone fracture, hence the award of Rs.2,000/- granted by the Tribunal under the heads pain and suffering is on the lower side and the same is modified to Rs.30,000/-. Similarly, the Tribunal has awarded Rs.1,000/- towards transportation charges and Rs.2,000/- towards extra nourishment which are on the lower side and the same are hereby modified as Rs.10,000/- towards transportation charges and Rs.5,000/- towards extra nourishments.

16. The Tribunal has not awarded any compensation under the head attender charges and loss of amenities, hence this Court is of the view by considering the nature of injuries sustained by the claimant, he must have assisted by a person during his treatment period, hence this Court is inclined to grant Rs.5,000/- towards attender charges and Rs.10,000/- towards loss of amenities. Other heads are concerned, the Tribunal has awarded just



compensation and this Court is inclined to confirm the same.

WEB COPY

17. 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 Compensation	72,000/-	1,20,000/- -	Enhanced
2.	Medical Bills (Ex.P.11)	87,310/-	87,310/-	Confirmed
3.	Loss of income	10,000/-	10,000/-	Confirmed
4.	Transportation expenses	1,000/-	10,000/-	Enhanced
5.	Extra Nourishment	2,000/-	5,000/-	Enhanced
6.	Pain & Sufferings	2,000/-	30,000/-	Enhanced
7.	Damages to clothes	1,000/-	1,000/-	Confirmed
8.	Attender Charges	---	5,000/-	Granted
9.	Loss of amenities	---	10,000/-	Granted
	Total Compensation	1,75,310/-	2,78,310/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,75,310/- is hereby enhanced to **Rs.2,78,310/- [Rupees Two Lakh Seventy Eight Thousand Three Hundred and Ten 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



C.M.A. No. 1937 of 2021

deposit. The second and fourth respondent Insurance Companies are directed to deposit the amount (50% each) 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.C.O.P.No.119 of 2018 on the file of the Additional Sub Judge, Motor Accidents Claims Tribunal, Ariyalur. 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 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.

17.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



C.M.A. No. 1937 of 2021

WEB COPY

To:

1. The Additional Sub Judge,
Motor Accident Claims Tribunal,
Ariyalur.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



WEB COPY



C.M.A. No. 1937 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 1937 of 2021

17.11.2023