



C.M.A.No.1412 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1412 of 2022

Moses Ponshingh

... Appellant

Vs.

1.M.Deivamani

2.TATA AIG General Insurance Company Limited,
2nd Floor, Samson Towers,
Pantheon Road,
Egmore, Chennai.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to allow this Civil Miscellaneous Appeal in judgement and decree dated 13.09.2019 passed in M.C.O.P.No.199 of 2018 on the file of the Motor Accident Claims Tribunal Cum Special Subordinate Judge, Krishnagiri District and enhance the award amount.

For Appellant : Mr.M.Selvam

For Respondents : No Appearance for R1

M/s.K.Vinod for R2

JUDGMENT

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The Appeal has been filed by the appellant for enhancement of the award in the judgement and decree dated 13.09.2019, made in M.C.O.P.No.199 of 2018 on the file of the Motor Accident Claims Tribunal Cum Special Subordinate Judge, Krishnagiri District.

2. On 11.12.2017, while the claimant was driving his two wheeler, a vehicle bearing No.TN 30 AC 0713, belonging to the first respondent driven by its driver in a rash and negligent manner dashed the claimant's motor cycle, due to which the claimant sustained grievous injuries.

3. According to the claimant, he was hospitalized from 11.12.2017 to 02.01.2018 for treatment of the injuries. The claimant was aged about 45 years at the time of the accident and he was a Head Master in Government Panchayat Union School, Melpathi Union, Krishnagiri District. The claimant was earning a sum of Rs.67,930/- and according to him, after the injuries sustained by him in the accident, he was not able to do his work as before. The claimant, therefore filed the claim petition, claiming a sum of Rs.75,00,000/- as compensation before the Claims Tribunal. The owner of the Ace Crane remained ex parte, and the claim petition was contested by the second respondent / Insurance Company, the insurer



of the Ace Crane. The second respondent filed a detailed counter denying all the averments made in the claim petition apart from denying the negligence, quantum as well as liability. Before the Claims Tribunal, the claimant examined himself as P.W.1 and marked Ex.P1 to Ex.P11. On the side of the respondents, two witnesses were examined and Ex.R1 to Ex.R3 were marked. The disability certificate was marked as a Court document under Ex.C1.

4.The Claims Tribunal on assessment of the entire evidence on record, rendered a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.5,74,565/- and mulcted the liability on the second respondent / Insurance Company. Aggrieved by the compensation awarded by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

5.Learned counsel for the claimant submitted that the award of the Tribunal towards permanent disability was erroneous and unsustainable. According to the counsel, the Tribunal adopted the unit method and awarded a sum of Rs.3,000/- for 1% of disability. However, the claimant was entitled to Rs.5,000/- for 1% of disability as the accident took place in the year 2017. The learned counsel



submitted that the order of the tribunal on the heads of transportation charges, extra nourishment and attender charges were very meager. The learned counsel therefore submitted that this is a fit case for enhancement of compensation.

5.Learned counsel appearing for the 2nd respondent on the other hand, submitted that the award of the tribunal was fair and just and did not call for any interference in the appeal.

6. I have heard the learned counsel for the appellant and the learned counsel for the respondents and perused the materials available on record.

7.The claimant was aged 49 years at the time of the accident. He was working as a Head Master in Government Panchayat Union School, Melpathi Union, Krishnagiri District and was earning Rs.75,000/- per month before the accident. In the accident, the claimant suffered fracture of acetabulum, clavical fracture, fracture of 3, 4 and 5 metacarpus and fracture of 3 to 11 bones of the rib cage, which is evidenced by Ex.P2 and Ex.P5. The Medical Board assessed permanent disability at 60% as injuries suffered by the claimant were grievous in nature.



8. The Tribunal, on the basis of the evidence on record, found that there was no functional disability and therefore, adopted the unit method for assessing the compensation towards the loss on account of disability.

9. Learned counsel for the appellant contended that the Tribunal having adopted the unit method, ought to have awarded Rs.5,000/- for 1% of disability instead of Rs.3,000/- per disability. Following the judgement of this Hon'ble Court in *M.Chinathambi vs. S.Deepa and another*, reported in **2020 (1) TN MAC 617**, I am of the view that a sum of Rs.5,000/- can be awarded towards 1% of disability. From Ex.P2, it is seen that the claimant was hospitalized for a period of 22 days between 11.12.2017 and 12.01.2018, for the treatment of the injuries suffered by him in the accident. It is also seen from Ex.P2 and Ex.P5, that the nature of injuries sustained by the claimant were grievous in nature.

10. Considering the nature of injuries sustained by the claimant and the period of hospitalization, I am of the view that the award of the Claims Tribunal towards transportation charges, extra nourishment and attender charges can be enhanced.



8.In light of the above discussions, the award of the tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Awarded by Claims Tribunal</i>	<i>Award by this Court</i>
1.	Compensation for 60% of disability (60x3000)	Rs.1,80,000/-	Rs.3,00,000/- (60x5000)
2.	Medical expenses	Rs.2,72,565/-	Rs.2,72,565/-
3.	Transportation charges	Rs.10,000/-	Rs.15,000/-
4.	Extra nourishment and attender charges	Rs.15,000/-	Rs.30,000/-
5.	Compensation for pain and suffering	Rs.48,000/-	Rs.48,000/-
6.	Social amenities	Rs.48,000/-	Rs.48,000/-
7.	Damages to cloths and other things	Rs.1,000/-	Rs.1,000/-
	Total	Rs.5,74,565/-	Rs.7,14,565/-

9.It is submitted by the second respondent that the entire compensation awarded by the Tribunal along with 7.5% interest and cost was already deposited by the second respondent / Insurance company.

10.In the light of the above submission of the learned counsel for the second respondent, a direction is issued to the second respondent / Insurance company to deposit the balance enhanced amount of Rs.1,40,000/- along with 7.5% interest within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the claimant shall not be entitled for interests for the delay period



of 465 days in preferring the appeal as the said delay was condoned on condition of forfeiture of interest for the delay period. On deposit being made by the second respondent / Insurance company, the claimant shall be entitled to withdraw the same by making proper petition before the Tribunal.

11.The Civil Miscellaneous Appeal is partly allowed and there shall be no order as to costs in this appeal.

26.06.2023

Anu

Speaking Order: Yes/No

Index: Yes/No

NCC:Yes/No

To

1. Motor Accident Claims Tribunal

Cum Special Subordinate Judge, Krishnagiri District

2.The Section Officer,

V.R. Section,

High Court, Madras.



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N.MALA, J

Anu

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