



C.M.A.No.1521 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1521 of 2023

A.Senthil Kumaran

... Appellant

Versus

1.V.Chitra

2.Reliance General Insurance Co. Ltd.,
Rais Towers, 2nd Floor,
2nd Avenue, Anna Nagar,
Chennai – 600 040

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 12.09.2022 passed in M.A.C.T.O.P. No.1981 of 2014, by the Motor Accident Claims Tribunal, Special Court I, Chennai.

For Appellant : Mr.R.Kalai Arasan

For R1 : Ex-Parte

For R2 : Mr.Suresh Srinivasan



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JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.A.C.T.O.P. No.1981 of 2014 dated 12.09.2022.

2.The claim petition was filed stating that on 23.01.2014, at about 10.00 hours, while the deceased was riding a motorcycle bearing registration No.TN-11-A-7747, at Tambaram to Muduchur Road, while he was under Madanapuram over bridge, the Tipper Lorry bearing Reg.No.TN-11-A-9168, driven by its driver in a rash and negligent manner came from behind and hit against the appellant's motorcycle, due to which the appellant fell down and sustained severe injuries and thus, he is entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company filed counter denying all the averments made in the claim petition including the manner of



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accident. The appellant did not possess valid driving license at the time of accident. In any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.The appellant/claimant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.13. On behalf of the 2nd respondent/Insurance Company no witness was examined and no document was marked. Disability certificate issued by the Regional Medical Board, Royapettah Hospital, Chennai was marked as Ex.C1.

6.The Tribunal after considering the oral and documentary evidence has held that the accident occurred due to rash and negligent driving of the driver of the Tipper Lorry and being the insurer of the Tipper lorry, directed the 2nd respondent/Insurance Company to pay the compensation of Rs.2,68,400/- to the appellant/claimant.

7.Aggrieved over the award passed by the Tribunal, the appellant/claimant filed the present appeal seeking for enhancement of compensation.



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8.Learned counsel appearing for the appellant/claimant would submit that the compensation awarded by the Tribunal is meagre. The appellant was working as helper in hotel and he has suffered several injuries and treated as in-patient in the hospital for 70 days. Therefore, the Tribunal ought to have adopted multiplier method while computing loss of income or disability. Learned counsel would further submit that the compensation awarded under other heads such as pain and suffering and loss of earning has to be enhanced and prayed for allowing the appeal.

9.Learned counsel appearing for the 2nd respondent/Insurance Company, per contra would submit that the disability assessed by the Medical Board and the evidence would show that the appellant is carrying on his regular activities. The Tribunal therefore rightly awarded compensation by adopting percentage method. Learned counsel would further submit that the compensation awarded under other heads are just and reasonable and prayed for dismissal of the appeal.



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10.The only question that arises for consideration in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable.

11.The appellant subjected himself to the examination by the Medical Board and Ex.C1 is the disability certificate issued by the Regional Medical Board, Royapettah Hospital, Chennai. As per Ex.C1, the appellant suffered 40% permanent disability. However, the appellant had not established that he suffered functional disability due to the injuries sustained by him in the accident. Therefore, this Court is of the view that the award of compensation towards disability arrived by the Tribunal by adopting percentage method is correct.

12.Further, this Court finds that the compensation awarded under some other heads can be enhanced. Admittedly, the appellant was taking treatment as in-patient for nearly 70 days in three spells. It is claimed that the appellant was working as helper in a hotel, at the time of accident and was earning substantially per month. Considering the facts and circumstance of the case, this Court is of the view that a sum of Rs.7,500/- can be fixed as monthly income of the appellant. Considering



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the nature of injuries, the appellant would not have attended his work for a period of eight months, the compensation under the head of loss of earning is enhanced from Rs.24,000/- to Rs.60,000/-. Similarly, the compensation under the head pain and suffering is enhanced from Rs.40,000/- to Rs.50,000/-. Considering the nature of injuries suffered by the appellant, the compensation awarded under the heads transportation and extra nourishment are enhanced to Rs.10,000/- and Rs.15,000/- respectively. The amount awarded by the Tribunal under other heads are just and reasonable. Thus, the compensation awarded by the Tribunal is 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	1,60,000	1,60,000	Confirmed
2.	Pain and Suffering	40,000	50,000	Enhanced
3.	Transportation	4,000	10,000	Enhanced
4.	Medical Expenses	9,343	9,343	Confirmed
5.	Extra Nourishment	10,000	15,000	Enhanced
6.	Attender Charges	21,000	21,000	Confirmed
7.	Loss of Earnings	24,000	60,000	Enhanced
	Total	2,68,343/- rounded off to Rs.2,68,400	3,25,343 rounded off to Rs.3,25,400	Enhanced by Rs.57,000/-



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13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,68,400/- is hereby enhanced to Rs.3,25,400/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd 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 four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant/claimant is permitted to withdraw the entire amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay necessary Court fee, if any on the enhanced compensation. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

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To:

- 1.The Motor Vehicle Accident Tribunal,
Special Court I, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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