



C.M.A.No.1719 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.07.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1719 of 2018

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K.Gopinath

.. Appellant

Vs.

1. Amirthalingam

2. The New India Assurance Co. Ltd.,
No.46, Moore Street,
Chennai-1

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 30.08.2017 made in M.C.O.P.No.6740 of 2014 on the file of the Motor Accidents Claims Tribunal, IInd Judge, Small Causes Court, Chennai.

For appellant : Mr.K.Varadha Kamaraj

For respondents : R-1 -- not ready in notice

Mr.R.Vinod for R-2

JUDGMENT

The claimant has filed the present appeal seeking enhancement of the Award of compensation by the Tribunal in M.C.O.P.No.6740 of 2014, dated

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30.08.2017.

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2. On 13.09.2014 about 12.30 hours, when the claimant was riding motorcycle bearing Registration No.TN-07-AM-8426 along the Royapettah towards Tharamani in front of Music Academy, a Honda Activa vehicle bearing Registration No.TN-09-AW-2729 came from the Beach towards R.K.Road and the Activa vehicle was driven by its rider in a rash and negligent manner, which had hit the claimant's vehicle, due to which, the claimant fell down and sustained grievous injuries. Hence, the claimant has filed the Claim Petition seeking to grant award for Rs.6 lakhs as compensation.

3. The first respondent herein is the owner of the offending vehicle and the second respondent herein is the insurer of the offending vehicle.

4. The second respondent/Insurance Company has filed counter statement before the Tribunal disputing their liability to pay the compensation.

5. Before the Tribunal, the claimant examined himself as P.W.1 and Dr.Thiagarajan was examined as P.W.2. Exs.P-1 to P-14 were marked. On the side of the Insurance Company, R.W.1 to R.W.3 were examined and Exs.R-1 to

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R-6 were marked.

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6. The Tribunal, on an analysis of the evidence on record, held that the rider of the first respondent's motor-cycle was involved in the accident and they are solely responsible for the accident. The accident was only due to careless, rash and negligent riding of the rider of the first respondent's vehicle. The Tribunal further held that the liability of the second respondent is not exonerated on the ground of violation of policy condition and it is liable to pay compensation to the claimant and they shall later recover the same from the first respondent. Ultimately, the Tribunal had passed the impugned Award by granting compensation under various heads as tabulated below:

<i>Sl.No</i>	<i>Heads under which the compensation is awarded</i>	<i>Amount</i>
1	Medical bills	18,640
2	Attendance charges	2,000
3	Disability	42,000
4	Loss of income	12,000
5	Pain and suffering	10,000
6	Transport to hospital	5,000
7	Extra-noursihment	5,000
	Total compensation awarded	94,640 rounded off to Rs.95,000-

The Tribunal awarded the above compensation with interest @ 9% per annum



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from the date of claim petition till the date of realisation and directed the second respondent to first pay the compensation and thereafter recover the same from the first respondent. Challenging the above Award of the Tribunal, the claimant has preferred the present appeal seeking enhancement of the compensation.

7. Heard both sides and perused the materials available on record.

8. Learned counsel for the appellant-claimant, in support of his arguments, relied on a decision of this Court reported in 2020 (1) TN MAC 617 (M.Chinnathambi Vs. S.Deepa), wherein this Court, while taking into consideration the cost of living, awarded the compensation under the head "disability" at Rs.60,000/- by adopting 12%, i.e. Rs.5,000 x 12%. Therefore, the learned counsel for the appellant/claimant submitted that the amount awarded by the Tribunal at Rs.42,000/- under the head 'disability' may be enhanced to Rs.56,000/- by adopting Rs.4,000/- per percentage (i.e. 4,000 x 14% disability). There is no dispute with regard to the award of compensation by the Tribunal under the other heads.

9. The learned counsel for the second respondent/Insurance Company did not dispute the enhancement now that was requested to be made by the



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claimant based on the above decision of this Court reported in 2020 (1) TN MAC 617.

10. Resultantly, while following the above decision of this Court reported in 2020 (1) TN MAC 617, modifies the impugned Award of the Tribunal by granting Rs.56,000/- under the head 'disability' without altering the amounts awarded under the other heads:

<i>Sl.No</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded by the Tribunal</i>	<i>Amounts awarded by this Court</i>
1	Medical bills	18,640	18,640
2	Attendance charges	2,000	2,000
3	Disability	42,000	56,000
4	Loss of income	12,000	12,000
5	Pain and suffering	10,000	10,000
6	Transport to hospital	5,000	5,000
7	Extra-noursihment	5,000	5,000
	Total compensation awarded	94,640 rounded off to Rs.95,000-	1,08,640 rounded off to Rs.1,09,000/-

11. It is made clear that this Court, while confirming the interest at 9% per annum for the amount awarded by the Tribunal at Rs.95,000/- (9% for Rs.95,000), awards the interest at 7.5% per annum in respect of the enhanced compensation, i.e. (7.5% for Rs.14,000/-).



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12. In view of the foregoing discussion, the impugned Award of the Tribunal is modified as indicated above. The second respondent/Insurance Company is directed to deposit the entire compensation now awarded to the credit of M.C.O.P.No.6740 of 2014 on the file of the IInd Court of Small Causes, Motor Accidents Claims Tribunal, Chennai, along with interest @ 9% for the amount awarded by the Tribunal at Rs.95,000/- and interest at 7.5% for the enhanced amount of compensation at Rs.14,000/-. The second respondent/Insurance Company shall deposit the said amount with costs as awarded by the Tribunal, less the amount(s) if any already deposited within a period of six weeks from the date of receipt of a copy of this judgment.

13. On such deposit being made, the Tribunal is directed to calculate the above said compensation including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the appellant/claimant and credit the actual amount in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

14. The appellant/claimant is directed to pay necessary Court fee, if any



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for the enhanced compensation amount.

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15. In other respects, the impugned Award of the Tribunal is hereby confirmed.

16. The present appeal is party allowed without costs, as directed above.

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Index: Yes/no
Speaking Order: Yes/no
Neutral Citation: Yes/no
CS

To

1. The Motor Accidents Claims Tribunal,
IInd Judge, Small Causes Court, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.

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