



C.M.A. No. 1852 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

C.M.A. No. 1852 of 2021

Babu

... Appellant / Petitioner

Vs.

1. S. Akbar

2. The Branch Manager,  
National Insurance Company Limited,  
Anuradha Complex, III Floor,  
Bangalore Road,  
Krishnagiri - 635001.

... Respondent / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 20.01.2020 passed in M.C.O.P. No.479 of 2018 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr. S.P. Yuvaraj

For R1 : No Appearance

For R2 : M/s. R. Srividhya



## JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant challenging the Judgment and Decree passed in M.C.O.P. No. 479 of 2018, dated 21.01.2020 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Krishnagiri.

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 21.11.2017 at about 6:50PM, the claimant was walking on the left side of the Krishnagiri Oldpet to Kattinayanapalli road, while he reached near KT Kesavan building, at that time an auto bearing Registration No.TN-29-Z-7450 belongs to the first respondent, driven by its driver in a rash and negligent manner hit against the claimant. Due to which, the claimant sustained grievous injuries on his head and was immediately taken to GH Krishnagiri and thereafter to Fortis hospital for further treatment. A criminal case was also registered against the auto driver in Cr.No.829/2017 u/s.270, 337 of I.P.C. on the file of the Krishnagiri Police Station. Due to injuries sustained, the claimant has come



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forward with a claim petition seeking compensation for a sum of Rs.20,00,000/- along with interest under Section 166 of M.V. Act.

4. The first respondent, who is the owner of the auto bearing Registration No.TN-29-Z-7450 has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the first respondent vehicle has filed a counter and disputed the manner in which the accident was taken place and also contended that the driver of the auto bearing Registration No.TN-29-Z-7450 has no valid driving licence at the time of occurrence. The second respondent – insurance company has further contended that the accident was taken place only due to the negligence on the part of the claimant, who suddenly crossed the road and invited the accident, there is no negligence on the part of the driver of the auto, and the compensation claimed under various heads is on the higher side, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.19 were marked and on the side of the respondent, no witnesses were examined and no exhibits were marked. The



disability certificate of the claimant issued by the Medical Board, Krishnagiri G.H. was marked as Ex.C.1.

6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the accident was taken place only due to the rash and negligent driving of the driver of the auto bearing Registration No.TN-29-Z-7450. In point nos.2 and 3, the Tribunal has held that there is no violation of policy condition, hence the second respondent – insurance company is liable to pay the compensation to the claimant and the Tribunal has quantified and granted compensation for a sum of Rs.5,49,597/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly fixed the compensation towards the



disability, pain and suffering, loss of amenities, extra nourishment and transportation expenses and also submitted that the claimant has sustained grievous head 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.

9. Per contra, the learned counsel appearing for the second respondent -insurance company has submitted that the Tribunal based on the evidence placed on record has fixed a just compensation, hence prays to confirm the same.

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

11. The quantum of compensation awarded under the head disability, the Tribunal relied on a Ex.C.1 - the disability certificate issued by the Medical Board, Krishnagiri G.H. Board has assessed the disability as 40% partial permanent disability. The Tribunal 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].***

Ex.P.2 - the wound certificate and Ex.P.3 - discharge summary shows that the claimant has sustained head injury with bilateral basifrontal and temporal contusions. Before the Tribunal, in the cross examination, the P.W.1 (claimant) has deposed that he is now perfectly alright and continuing his earlier avocation, and his evidence confirms that the disability sustained by him is not functional disability and he has not incapacitated from doing his avocation. 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 and also the age of the claimant herein, 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.2,00,000/- (Rs.5,000/- x 40% of disability).

12. The Tribunal has awarded Rs.25,000/- towards transportation and Nutrition & Attender charges, Rs.32,000/- under the head pain and sufferings, Rs.32,000/- under loss of amenities and enjoyment of life,



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Rs.3,39,597/- towards medical bills and Rs.1,000/- towards damages to clothing and articles. This Court is of the view that considering the nature of injuries sustained by the claimant, the Tribunal has awarded just and appropriate compensation and requires no further enhancement.

13. 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 (40%)                             | 1,20,000/-                      | 2,00,000/-                        | Enhanced                               |
| 2.     | Transportation, Nutrition & Attender Charges | 25,000/-                        | 25,000/-                          | Confirmed                              |
| 3.     | Pain and Sufferings                          | 32,000/-                        | 32,000/-                          | Confirmed                              |
| 4.     | Loss of Amenities and Enjoyment of life      | 32,000/-                        | 32,000/-                          | Confirmed                              |
| 5.     | Medical Bills                                | 3,39,597/-                      | 3,39,597/-                        | Confirmed                              |
| 6.     | Damages to clothing and articles             | 1,000/-                         | 1,000/-                           | Confirmed                              |
|        | <b>Total Compensation</b>                    | <b>5,49,597/-</b>               | <b>6,29,597/-</b>                 | <b>Enhanced</b>                        |

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,49,597/- is hereby enhanced to **Rs.6,29,597/- [Rupees Six Lakh Twenty Nine Thousand Five**



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**Hundred and Ninety Seven 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 deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount 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.479 of 2018 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Krishnagiri. 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.

**16.11.2023**

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

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



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**K. RAJASEKAR, J.**

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