



C.M.A.No.3269 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3269 of 2021

Prakash @ Prabhakaran

... Appellant / petitioner

Vs.

1. Nagaraj

[R1 remained ex-parte before Tribunal.
Hence notice to R1 dispensed with]

2. The Divisional Manager,

The New India Assurance Company Limited,
No.1, Officers Line,
Vellore.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 22.11.2019, made in M.C.O.P.No.422 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Tiruvannamalai.

For Appellant : Ms. M. Malar
For R1 : Exparte before Tribunal



C.M.A.No.3269 of 2021

For R2 : Mr. R. Rajesh

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation awarded in M.C.O.P.No.422 of 2016, dated 22.11.2019, on the file of the Motor Accidents Claim Tribunal, Special Sub Judge, Tiruvannamalai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 28.06.2016 at about 12.20 p.m., the petitioner after finishing his personal work was riding his two-wheeler on the extreme left side of the road from Chengam to Tiruvannamalai road near JBR restaurant, at that time, a lorry bearing Registration No.TN 05 Q 5331 belongs to the first respondent came from opposite direction in rash and negligent manner in high speed and dashed against the two-wheeler and causing the accident. Due to which, the petitioner had sustained severe grievous injuries in all over the body and



C.M.A.No.3269 of 2021

immediately he was admitted into the Government Hospital, Chengam and thereafter he was referred to Government Medical College Hospital, Tiruvannamalai for further treatment and then he was shifted to Jipmer Hospital, Puducherry. After discharge, the claimant has filed claim petition under Section 166A of the Motor Vehicle Act, claiming compensation of Rs.10,00,000/-.

4. The first respondent has not contested the claim and was remained ex-parte before the Tribunal. The second respondent is the insurer of the lorry filed counter and contended that the accident was not occurred due to the negligent act of the driver of the lorry and the lorry was not insured with the respondent. The accident had occurred only due to the negligent act of the two-wheeler and the claim made under various heads is also on the higher side and prays to dismiss the claim petition.

5. Before the Tribunal, the on the side of the claimant P.W.1 was examined and Exs.P1 to P4 were marked. On the side of the second respondent R.W.1 and R.W.2 was examined and no documentary evidence



C.M.A.No.3269 of 2021

marked. The Disability Certificate is marked as Ex.C1.

WEB COPY

6. The Tribunal based on the evidence placed on record, in Point No.1 has held that the negligent act of the driver of the first respondent is responsible for causing the injuries to the claimant and in Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.1,26,500/- as compensation payable to the claimant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation and in Point No.3, the Tribunal has held that the second respondent is directed to pay the compensation to the claimant and thereafter recover the same from the first respondent owner of the lorry.

7. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimant has approached this Court seeking enhancement of compensation. The respondents have not filed any appeal against the award.

8. The learned counsel for the claimant submitted that the



C.M.A.No.3269 of 2021

claimant/injured was sustained fracture of both bone right leg malunited with head injury sequelae and the disability assessed by the Doctor as 20% which has not been properly appreciated, while awarding compensation and the Tribunal has awarded Rs.3,000/- per percentage of injury by treating the disability as a temporary disability. The Tribunal has not considered the loss of earning capacity of the injured hence prays to award compensation under the head loss of earning capacity. He has also submitted that the compensation awarded under various heads is also on the lower side and prays to modify the same.

9. Per Contra, the learned counsel for the Insurance Company has submitted that the Tribunal after considering the evidences placed on record and after considering the injuries sustained by the claimant, just compensation has been awarded hence prays to dismiss the appeal.

10. I have considered the rival submissions made on both sides and also perused the entire records.



C.M.A.No.3269 of 2021

WEB COPY

11. On a perusal of the records, it shows that the Disability Certificate was obtained from the Medical Board, after subjecting the claimant for medical examination and the certificate which is marked as Ex.C1 shows that the disability is fixed as 20%. This Court in ***Chinnatambi vs. Deepa [2020 (1) TN MAC 617]*** has fixed eligible compensation per percentage for the accident taken place in the year 2016 as Rs.5,000/-. In this case, the injury sustained by the claimant is both bone fracture and this injury is malunited fracture and this injury has not caused any impact on the avocation of the claimant. Eventhough, he claims that he is the loadman, the same has not been proved by him. Hence, by following the Judgment of this Court in ***Chinnatambi*** case cited supra.

12. This Court is inclined to modify the compensation amount per percentage of disability from Rs.3,000/- to Rs.5,000/-. Accordingly a sum of Rs.1,00,000/- is awarded under the head permanent disability.

13. The Tribunal has not awarded any compensation under the



head attender charges since the claimant had undergone in-patient treatment in the Government Hospital which requires attender, this Court is inclined to award a sum of Rs.6,000/- under the head 'attender charges'. The Tribunal has also not awarded compensation under the head transport charges and this Court is inclined to award a sum of Rs.5,000/- under the head of 'Transport Charges'. As far as the compensation awarded under other heads are concerned the same is just and reasonable and the same is hereby confirmed.

14. Thus, the compensation awarded 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)	Enhanced/ Reduced / Granted / Confirmed
1.	For Disability	Rs.60,000/-	Rs.1,00,000/-	Enhanced
2.	Pain and sufferings	Rs.30,000/-	Rs.30,000/-	Confirmed
3.	Loss of Amenities	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Nutrition Charges and loss of things	Rs.15,000/-	Rs.15,000/-	Confirmed
5.	Loss of income for one month	Rs.6,500/-	Rs.6,500/-	Confirmed
6.	Attender Charges	---	Rs.6,000/-	Awarded
7.	Transport Charges	---	Rs.5,000/-	Awarded
	Total	Rs.1,26,500/-	Rs.1,77,500/-	Enhanced by



C.M.A.No.3269 of 2021

				Rs.51,000/-
--	--	--	--	--------------------

WEB COPY

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,26,500/- is hereby enhanced to Rs.1,77,500/- [Rupees One Lakh Seventy Seven Thousand and Five Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.422 of 2016, on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Tiruvannamalai. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount 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 necessary Court fee,



C.M.A.No.3269 of 2021

if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

01.11.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Secial Sub Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

2.The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



C.M.A.No.3269 of 2021

K.RAJASEKAR,J.

ssi

C.M.A.No.3269 of 2021

01.11.2023