



C.M.A.No.2187 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.06.2023

PRONOUNCED ON: .06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2187 of 2018

K.Munusamy

... Appellant/Petitioner

Vs.

1. M/s.Eswari Engineering College,
No.2, Veerasamy Street,
West Mambalam, Chennai – 33.

2. The New India Assurance Co., Ltd.,
No.45, Moore Street, V – Floor,
Chennai – 1.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 16.02.1010 made in M.C.O.P.No.4867 of 2003 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai.

For Appellant	:	Mr. Anand and Suryas
For R1	:	Ex-parte before Tribunal
For R2	:	Mr.G.Udhayasankar



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant in M.C.O.P.No.4867 of 2003, aggrieved over the quantum of compensation awarded by the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai, wherein, the Motor Accidents Claims Tribunal has awarded a sum of Rs.77,500/- as compensation for the injuries sustained by the claimant in the accident taken place on 13.05.2003.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. On 13.05.2003 at about 2.10 hours, the claimant was riding his two-wheeler bearing registration No.TN 20 B 3751 on CTH Road, near Vaishnav Mahal, Thirumullaivoyal on the west to East direction at that time, the driver of the private bus, bearing registration No.TN 29 A 4477 came in the opposite direction in a rash and negligent manner and dashed against the petitioner's two-wheeler causing grievous injuries. He was admitted in the Government Kilpauk Medical College Hospital, Chennai and after treatment, the petitioner was discharged with grievous injuries. Hence, the



petitioner claimed compensation for a sum of Rs.1,50,000/-.

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4. The first respondent - vehicle owner, remained ex-parte before the Tribunal. The second respondent is the Insurance Company countered that the accident was occurred only due to rash and negligent driving of the claimant and that the driver of the private bus is not responsible for the accident. They have also disputed the injuries and disabilities caused to the petitioner and stated that compensation claimed before the Tribunal is on the higher side.

5. Before the Tribunal, the claimant was examined as P.W.1 and one Dr.K.J.Mathiazhagan was examined as P.W.2 to prove the disability and claimant marked documents as Exs.P1 to P6 and on the side of the second respondent, no witness was examined and no documents marked.

6. Based on the evidence adduced before the Tribunal, it is held that from the evidence of the injured and since no rebuttal evidence adduced by the respondent side to disprove the evidence of the claimant, the rash and



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the negligent act of the driver of the private bus is responsible for the injuries caused to the claimant.

7. The Tribunal has awarded compensation on the following heads: Loss of earnings at Rs.15,000/-; Transport Expenses at Rs.2,000/-; Extra Nourishment at Rs.3,000/-; Damaged to cloth and articles at Rs.500/-; Medical Expenses at Rs.2,000/-; Pain and Suffering at Rs.10,000/- and Permanent Disability at Rs.45,000/-.

8. The claimant has filed this appeal on the grievance that the compensation awarded for the injures and disabilities caused to him is on lower side and prays to increase the compensation.

9. It is the case of the claimant that he was running a chicken stall and was earning a sum of Rs.5,000/- per month. He has suffered fracture in his right humerous and other multiple injuries all over the body. The Doctor, who was assessed his disability and given certificate that he has sustained 45% disability but the injuries sustained by the claimant is not permanent functional disability. Hence, the Tribunal awarded a sum of



Rs.1,000/- each percentage of disability [1000 X 45% = Rs.45,000/-] and granted a sum of Rs.45,000/- as permanent disability.

10. The learned counsel for the appellant contended that grant of Rs.1,000/- each percentage of disability is to be increased to Rs.2,000/- since it is the norms followed by the other Tribunals in similar cases.

11. The learned counsel for the second respondent also concurred that fixing each percentage of disability during the relevant period at Rs.2,000/- could be proper.

12. I have considered the rival submissions on both sides and also perused the materials available on record.

13. The Trial Court has awarded Rs.15,000/- under the head loss of income by calculating three months for the period of disablement in this case. The Tribunal has not awarded any amount as attendant charges since the petitioner has undergone treatment in the Government Kilpauk Medical College Hospital, I am inclined to grant Rs.3,000/- per month for



attendant charges. Accordingly, the petitioner is entitled for a sum of Rs.9,000/- [Rs.3,000/- X 3 = Rs.9,000/-] under the head attendant charges.

14. By following the Judgements of this Court in ***Pramanathan @ Prakash vs. Managing Director, Maruthupandiyar Transport Corporation and Another*** reported in ***2008 (1) TNMAC 300***. I am inclined to award compensation for a sum of Rs.2,000/- per percentage of disability. Accordingly, compensation awarded under the head permanent disability is enhanced to Rs.2,000/- per percentage and the appellant is entitled for a sum of Rs.90,000/- [Rs.2000 X 45% = Rs.90000/-] under the head Permanent Disability.

15. The petitioner has not produced any documents before the Tribunal or before this Court to show that what is the period of disablement and how long he had undergone treatment. The Tribunal in its award has granted a sum of Rs.15,000/- under the head loss of earning capacity during the period of disablement and this Court finds the same is fair and reasonable. Similarly, the compensation awarded under other heads are also reasonable. Accordingly, the award passed by the Tribunal under various



heads are hereby enhanced is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earnings	Rs.15,000/-	Rs.15,000/-	Confirmed
2.	Transport Expenses	Rs.2,000/-	Rs.2,000/-	Confirmed
3.	Extra-nourishment	Rs.3,000/-	Rs.3,000/-	Confirmed
4.	Damages to cloth and articles	Rs.500/-	Rs.500/-	Confirmed
5.	Medical expenses	Rs.2,000/-	Rs.2,000/-	Confirmed
6.	Pain and Sufferings	Rs.10,000/-	Rs.10,000/-	Confirmed
7.	Permanent Disability	Rs.45,000/-	Rs.90,000/-	Enhanced
8.	Attender Charges	---	Rs.9,000/-	Granted
	Total	Rs.77,500/-	Rs.1,31,500/-	Enhanced by Rs.54,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.77,500/- is hereby enhanced to Rs.1,31,500/- [Rupees One Lakh Thirty One Thousand and Five Hundred only] together with interest at the rate of 7.5% per annum from the date 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 sixs weeks from the date of



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receipt of a copy of this judgment to the credit of M.C.O.P.No.4867 of 2003, on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai. On such deposit, the appellant/claimant is entitled to withdraw the amount, now awarded 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, as laid down by a Division Bench of this Court in the case of *The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others in C.M.A.No.428 of 2016, dated 11.03.2016 reported in 2016 (2) LW 561*. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, 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.

23.06.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

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



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K.RAJASEKAR,J.

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Pre delivery Judgment made in
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