



C.M.A. No. 2055 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2055 of 2021

Venkatesan

... Petitioner/ Appellant

Vs.

1. S. Suresh

2. The Divisional Manager,
Oriental Insurance Company Limited.,
No.32/3/2, 13th Street,
1st Floor, Phase II,
TNHB, Sathuvachari,
Vellore.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 14.08.2020 passed in M.A.C.T.O.P. No. 41 of 2017 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Tirupattur.

For Appellant : M/s. Sunithi Abirami

For R1 : Ex-parte

For R2 : M/s. M. J. Vijayaraghavan



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C.M.A. No. 2055 of 2021

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation amount awarded in the Judgment and decree dated 14.08.2020 passed in M.A.C.T.O.P. No. 41 of 2017 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Tirupattur, wherein the Tribunal has awarded Rs.7,49,398/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. The case of the claimant is that on 22.02.2015, at about 2:20PM, the claimant was riding a TVS XL Motor Cycle bearing Registration No.TN-29-T-7427 along with his wife namely Padma and minor Elavarasan, on the left hand side of the road, while the motor cycle reached at Chinnakasinaichanpatti Junction road, in between Tirupattur to Dharmapuri main road, a TVS Star City Motor cycle bearing Registration



C.M.A. No. 2055 of 2021

No. TN-83-Z-7877 was ridden by one Sathiyaraj in a rash and negligent manner towards Tirupattur to Kunichi has dashed against the TVS XL motor cycle of the claimant. Due to which, the claimant and the persons travelled in the TVS XL Motor cycle has sustained grievous injuries and immediately, they were taken to the Government Hospital, Tirupattur and admitted as inpatient and thereafter referred to Government Medical College and Hospital, Dharmapuri for further medical treatment. A criminal case was also registered in Crime No.54 of 2015 U/s. 279 and 337 of I.P.C. on the file of Kandhili Police station. Due to the injuries sustained, the claimant has filed a claim petition seeking compensation for a sum of Rs.10,00,000/- along with interest under section 166(A) of the Motor Vehicles Act, 1988.

4. The first respondent is the owner of the TVS Star City Motor cycle bearing Registration No. TN-83-Z-7877 has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and contended that the accident was taken place only due to the rash and negligent riding of the rider of the TVS XL motor cycle bearing Registration No.TN-29-T-7427 and at the time of accident, the claimant has



no valid driving licence. The insurance company has also contended that the rider of the TVS Star City Motor cycle bearing Registration No. TN-83-Z-7877 namely Sathiyaraj was also not possessed with a valid driving licence and thus there is a violation of policy condition and further contended that the compensation claimed under various heads are excess, hence, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Exs.P.1 to P.31 were marked, on the side of the second respondent- insurance company, R.W.1 was examined and Ex.R.1 was marked.

6. Based on the evidence placed on record, the Tribunal in point No.1, has held that the accident was caused only due to the rash and negligent riding of the rider of the TVS Star City Motor cycle bearing Registration No. TN-83-Z-7877. In point No.3, the Tribunal has quantified and granted a compensation for a sum of Rs.7,49,398/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point No.4, the Tribunal has directed the second respondent -



insurance company to pay the entire award amount and thereafter to recover the same from the first respondent by considering the fact that the rider of the offending TVS Star City Motor cycle bearing Registration No. TN-83-Z-7877 namely Sathiyaraj had no valid driving licence at the time of accident.

7. Aggrieved over the award of compensation, the claimant / appellant herein has filed this appeal seeking enhancement of compensation awarded by the Tribunal.

8. The learned counsel appearing for the claimant has submitted that the compensation awarded by the Tribunal more particularly under the heads extra nourishment, attender charges and loss of amenities are on the lower side and also submitted that as far as other heads are concerned, the claimant have not come forward for any enhancement. Hence, prays to enhance the compensation awarded by the Tribunal under the heads extra nourishment, attender charges and loss of amenities.

9. Per contra, the learned counsel appearing for the insurance



company has submitted that the compensation awarded by the Tribunal under various heads are just and reasonable, hence prays to confirm the same.

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

11. It is the case of the claimant that he has suffered permanent disability of 75% and the Ex.P.3, the treatment certificate shows that, at the time of admission, the claimant has sustained fracture on the left knee, femur and left hand. The Medical Board of Vellore Medical College and Hospital has assessed the disability of the claimant as 75% considering the injuries sustained by him and it is recorded as there is a reduction in the movement of various parts and joint on the femur, small united fracture on the left femur, left elbow has also having non-united fracture. Based on the disability assessed by the medical board, the Tribunal has accepted the same and awarded compensation. The claimant has not raised any grievance regarding the compensation granted under the head loss of future earning capacity.



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12. Similarly, the second respondent - insurance company has not come forward with any appeal in challenging the quantum of compensation awarded by the Tribunal. As stated above, the injurer/claimant has sustained multiple fractures all over his body and the disability of the claimant is also assessed as 75%. The Treatment records were marked in Ex.P.3 and P.4 to substantiate the injuries sustained and treatment given for the same. On perusal of the same, it shows that the claimant has undergone different types of surgeries and subsequently, the implants was also removed by way of surgery. The claimant has undergone treatment from 22.02.2015 to 18.03.2015 in the orthopaedics department at Government Hospital, Vellore and again undergone in-patient treatment in the CMC, Vellore from 25.07.2015 to 30.07.2015, for these periods the claimant must have been assisted by an attender.

13. On perusal of the disability certificate issued by the medical board, it is clear that there is a reduction of movement in various parts and joints of the claimant and the disability is termed as "Locomotor disability". Hence, this Court is of the view that the compensation awarded under the head extra nourishment, attender charges and loss of amenities requires to



be modified. The Tribunal has awarded Rs.10,000/- each under the heads of extra nourishment, attender charges and loss of amenities, which is on the lower side and accordingly, the same are modified as Rs.20,000/- for extra nourishment, Rs. 15,000/- as attender charges and Rs.20,000/- for loss of amenities. As far as the compensation awarded by the Tribunal under other heads are concerned, the claimant have not raised any dispute and this Court is of the view that the same are just, hence this Court is inclined to confirm the same. As far as other terms of the award held by the Tribunal is hereby confirmed.

14. 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.	Permanent disability	5,67,000/-	5,67,000/-	Confirmed
2.	Pain and Suffering	75,000/-	75,000/-	Confirmed
3.	Extra Nourishment	10,000/-	20,000/-	Enhanced
4.	Transport Expenses	12,000/-	12,000/-	Confirmed
5.	Attender Charges	10,000/-	15,000/-	Enhanced
6.	Loss of amenities	10,000/-	20,000/-	Enhanced
7.	Medical Expenses	65,398/-	65,398/-	Confirmed
	Total Compensation	7,49,398/-	7,74,398/-	Enhanced



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15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,49,398/- is hereby enhanced to **Rs.7,74,398/- [Rupees Seven Lakhs Seventy Four Thousand Three Hundred and Ninety Eight 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.41 of 2017 on the file of the Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur. The insurance company is given liberty to recover the same from the first respondent. On such deposit, the claimant 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 claimants are directed to pay the necessary Court fee, if



C.M.A. No. 2055 of 2021

any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

19.10.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

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



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C.M.A. No. 2055 of 2021

K. RAJASEKAR, J.

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C.M.A. No. 2055 of 2021

19.10.2023