



C.M.A.No.2368 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2023

CORAM:

THE HON'BLE Mr.JUSTICE A.A.NAKKIRAN

CMA. No.2368 of 2019

T.A.Sundaravadivu

... Appellant

..VS..

1.Senthilkumar
2.United India Insurance Co.,LTd.,
146/N, 2nd Floor, Kumar Complex,
Annasalai, Tiruchengode Town & Taluk,
Namakkal District.

... Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988,
against the judgment and decree dated 21.08.2018 made in MCOP.No.5
of 2016 on the file of the Motor Accident Claims Tribunal, (Subordinate
Judge Court, Tiruchengode)

For Appellant	: Mr. N.Mohanasundaram for Mr.T.S.Arthanareeswaran
For Respondents	: Mr.J.Chandran for R2 Dispensed with for R1



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JUDGMENT

Aggrieved over the quantum of compensation arrived at by the Tribunal at Rs.1,65,300/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, the claimant / appellant is before this Court. Since challenge to the appeal is only on quantum, this Court deals only with the quantum arrived at by the Tribunal, confirming the negligence aspect.

2. It is the case of the claimant/appellant that on 04.08.2015, at 11.15 a.m., while the claimant was travelling as a pillion rider in the Hero Honda bike bearing Regn.No.TN-54-U-5423 driven by another person, from Sankagiri to Konganapuram main road, near the path going to Orukkamalai Temple, from South to North direction proceeding to Tharamangalam, when a dog crossed the road, the rider of the motor cycle, rode the vehicle, applied brake suddenly, due to which, the claimant sustained grievous injuries on his right hand shoulder, deep



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injury at right eyebrow, sustained fracture, injury on his left thigh and abrasions all over the body. Claiming that the second respondent is liable to pay compensation, claim petition came to be filed claiming a sum of Rs.15,00,000/- as compensation before the Tribunal.

3. Per contra, the learned counsel for the second respondent has disputed the manner of accident, place of accident, nature of injuries, alleged disability, age, previous health conditions, period of treatment, expenses incurred and monthly income given by the appellant/claimant in total. The amount claimed under various heads by the claimant is highly excessive. He further submitted that since the claimant himself is a tort-feasor, this respondent is not liable to pay the compensation to the claimant. The alleged accident occurred on 04.08.2015 and the FIR was given on 06.08.2015. The delay of two days creates suspicion. He further submitted that rash and negligent driving of the rider of the bike is solely responsible for the accident and this respondent is not liable to pay any compensation. He further submitted that the Tribunal has granted



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reasonable compensation under various heads and no modification needs to be granted. At the time of accident, the rider of the offending vehicle rode the said vehicle in a rash and negligent manner and caused the accident. In fine, he submitted that the well reasoned award of the Tribunal does not require any interference by this Court. Hence, he prays to dismiss the appeal.

4. The Tribunal, based on the oral and documentary evidences, has awarded a sum of Rs.1,65,300/- as total compensation payable by the second respondent to the claimant under the following heads:

Heads	Award Amount (Rs.)
Medical Expenses	55,299.50/-
Pain and Sufferings	10,000.00/-
Extra Nourishment	10,000.00/-
Partial Permanent disability	90,000.00/-
Total	Rs.1,65,299.50/-

Rounded off to Rs.1,65,300/-

5. Heard the learned counsel for the appellant and the learned



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counsel for the second respondent. Perused the materials available on record.

6. The learned counsel for the Appellant submitted that the appellant has sustained fracture on the right hand, injuries below the right shoulder and injuries at left thigh and deep injury at right eye brow and abrasions all over the body. The claimant has taken treatment as inpatient for one week, at Sankagiri Government Hospital and then shifted to Thirukumaran Hospital, Tiuchengode. Later he had taken treatment as out- patient. The Tribunal has erred in taking Rs.3000/- for 1% disability and a sum of Rs.90,000/- has been awarded towards 'partial permanent disability'. The appellant/claimant, was aged 49 years at the time of accident and he was a Rig Manager at Tiruchengode. The PW2/Doctor who assessed the disability of the Appellant has fixed his disability at 30%. The disability compensation awarded by the Tribunal as seen from the impugned award is Rs.90,000/- by calculating at Rs.3000/- per percentage of disability. The amount awarded under the



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head of 'Extra Nourishment' is Rs.10,000/- which is also meagre. Due to the grievous injuries, suffered by the appellant, he is in need of more extra nourishment. Further, it is disputed that the claimant had taken treatment for quite some time as out patient also and during that time, the claimant had incurred attendant and medical expenses. But the Tribunal has not awarded any amount towards attender charges. The amount awarded under the head of 'pain and sufferings', and extra nourishment, also appears to be meagre. He further submitted that the Tribunal had failed to award under the head of 'Transport to Hospital', and 'damages to clothes'. He further submitted that ample evidence and documents were produced before the Tribunal to prove the age, avocation, injuries and treatment details of the claimant / appellant and hence the award of the Tribunal needs significant enhancement.

7. However, considering the nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix the percentage of disability at Rs.4000/- for each percentage of disability since the year of



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the accident is 2015. However, in view of the modification of the Rs.3000/- to Rs.4000/- for each percentage by this Court, the disability compensation is enhanced to Rs.1,20,000/- by this Court instead of Rs.90,000/- assessed by the Tribunal. Similarly, the amounts awarded under the heads of 'pain and sufferings ' and 'Extra Nourishment',' are also enhanced to Rs.20,000/- and Rs.20,000/-,respectively. In the same manner, it would be appropriate to award Rs.10,000/- towards Transport, Rs.10,000/- towards Attendant charges and Rs.5000/- towards damages to clothes.

8. A perusal of the judgment of the Tribunal would go to show that it has taken into consideration the documents, viz, Ex.P.3/Discharge summary; Ex.P4/Medical bills; Ex.P6/Wound Certificate; Ex.P7/Accident Register; Ex.P8/Disability certificate issued by PW2 and has awarded Rs.55,299.50/- towards medical expenses, which in the opinion of this Court, is based on evidence on record and hence the said sum awarded under this head is confirmed as such. Thus, the break-up



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details of the modified compensation are as follows:

Heads	Amount (Rs.)
Partial permanent Disability (30%x4000)	1,20,000
Medical expenses	55,299.50
Pain and suffering	20,000
Extra Nourishment	20,000
Transport	10,000
Attender Charges	10,000
Damages to clothes	5,000
	
Total	Rs.2,40,299.50/-
	

Rounded off to **Rs.2,40,300/-**

9. In the result, the Civil Miscellaneous Appeal filed by the claimant/appellant is partly allowed by enhancing the total compensation from Rs.1,65,300/- to **Rs.2,40,300/-**, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that for the enhanced amount of Rs.2,40,300/-, the interest rate of 7.5% shall be calculated from the date of filing of this



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appeal. Since the compensation amount now awarded is Rs.2,40,300/-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced award amount.

10. The second respondent/Insurance Company shall deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter. Thereafter, the appellant / claimant shall withdraw the same, on making proper application before the Tribunal. No costs.

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Index : yes/No
Internet: Yes/No

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A.A.NAKKIRAN., J.

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To

1. The Motor Accident Claims Tribunal,
(Subordinate Judge Court, Tiruchengode)
2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

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