



C.M.A.No.663 of 2018

IN THE HIGH COURT OF JUDICATURE OF MADRAS

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DATED : 21.02.2023

CORAM:

THE HONOURABLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No. 663 of 2018

C.Karunakaran

... Appellant/Petitioner

Vs.

1.M/s.SRM Transport India Private Limited,
SRM Nagar,
Kattankolathur,
Chengalpattu Taluk,
Kanchipuram Distirct - 603 203.

2.The New India Assurance Company Limited,
No.80, Arcot Road,
Porur,
Chennai- 116.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 16.07.2015 in M.C.O.P.No.653 of 2013 on the file of the learned II Additional District & Sessions Judge, Motor Accidents Claims Tribunal, Poonamallee.



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For Appellant : Mr.J.Mahalingam

For Respondents: Mr.K.Vinod for R2

R1 - ex parte

JUDGMENT

The appellant has filed the above appeal aggrieved by the very meagre compensation that has been granted by the learned II Additional District & Sessions Judge, Motor Accidents Claims Tribunal, Poonamallee in M.C.O.P.No.653 of 2013 dated 16.07.2015.

2.It is the case of the claimant that on 04.05.2013 about 12.50 hours, while the petitioner was riding his motor cycle, bearing Registration No.TN-10C-2896 at Arcot Road from North to South direction, a Van bearing Registration No.TN-19D-4782 driven by its driver in the same direction dashed against the motor cycle at the back side. Due to the impact, the petitioner lost his control, fell



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down on the left side and dragged the petitioner for a long distance and cause grievous injuries. Since the accident occurred only due to the rash and negligent driving of the driver of the van, the 1st respondent as the owner of the vehicle and the 2nd respondent as the insurer of the vehicle, they are liable to pay Rs.10,00,000/- as compensation to the claimant.

3.The 1st respondent remained absent and was set *ex parte*. The 2nd respondent Insurance Company had filed a counter statement disputing the manner of the accident and stated that the petitioner was riding his motor cycle in a rash and negligent manner endangering the public safety and tried to overtake the van and thus cause accident. Therefore, the accident took place due to the negligent act of the petitioner and not by the driver of the 1st respondent vehicle.



4.The Tribunal after considering the evidence on record came to a conclusion that the accident was occurred due to rash and negligent driving of the 1st respondent. Ultimately, the Tribunal has awarded a sum of Rs.2,56,300/- towards compensation with interest @ 7.5% per annum from the date of petition till the date of realization to the petitioner. Aggrieved by the very meagre compensation that has been granted by the Tribunal, the petitioner is before this Court.

5.The learned counsel appearing for the appellant /petitioner would submit that the petitioner has sustained Grade III Compound communitied fracture of both bones right leg, supra condylar fracture of right humerus with dislocation of right shoulder, head injuries and other multiple injuries all over the body. Immediately, the appellant was given first aid at Sri Ramachandra Hospital, Porur, Chennai, on 04.05.2013 and further transferred to Rajiv Gandhi Government General Hospital,



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Chennai, as inpatient from 05.05.2013 to 04.06.2013 for a month and continued his treatment as outpatient for a long period. He would submit that at the time of accident, the appellant was working as Aluminum Fabricator and was earning a sum of Rs.700/- per day. Due to the injuries sustained in the accident and subsequent disability, the appellant is unable to do any work and lost his earning capacity. PW2 - Dr.V.R.Subramaniam has examined and assessed the disability of the appellant at 63%.

6. The learned counsel appearing for the appellant would further submit that the Tribunal ought to have adopted the multiplier method for arriving at compensation for future loss of earning capacity. No amount has been awarded under the heads of loss of earning during the period of treatment, compensation for the future loss of earning, permanent disability, loss of expectation of normal longevity of life and mental agony. He would submit that the Tribunal has granted compensation under



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various heads are very low and therefore, the Award has to be enhanced.

7.Per contra, the learned counsel appearing for the 2nd respondent would submit that the Tribunal accepted the Disability Certificate issued by PW2-Doctor and granted compensation. The amounts granted under various heads are excessive and prayed for dismissal of the appeal.

8.Heard the learned counsel appearing on either side and perused the papers.

9.From the material available on record, it is seen that the appellant suffered grievous injuries all over the body. To substantiate the injuries sustained by him, the appellant has examined PW2 Doctor who deposed about the nature of injuries and treatment taken by the appellant and accepted the disability



assessed as 63%. The Tribunal awarded a sum of Rs.1,26,000/- towards disability by awarding Rs.2,000/- per percentage of disability. The amount awarded by the Tribunal per percentage of disability is meagre. The amount awarded on percentage basis was periodically enhanced. This Court by the Judgment reported in the matter of **National Insurance Company Limited v. G.Ramesh**, [2013 (2) TN MAC 583], granted Rs.3,000/- per percentage for accident occurred in the year 2009, enhancing from Rs.2,000/- per percentage taking into account the cost of living at that time. Due to passage of time, a sum of Rs.3,000/- per percentage of disability awarded in the year 2013 for the accident of the year 2009 is to be enhanced taking into account the cost of living at that time. Admittedly, the appellant was working as Aluminum Fabricator. A sum of Rs.5,000/- granted under the head of transportation is enhanced to a sum of Rs.10,000/-. According to the appellant, he was admitted in the hospital and underwent surgery. Therefore, Rs.10,000/- is granted under the



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head of attendant charges. Rs.30,000/- granted under the head of Pain and Sufferings is enhanced to a sum of Rs.40,000/-. A sum of Rs.10,000/- is granted under the head of loss of estate. In all other respects, the Award remains unaltered. The enhanced compensation would be a sum of Rs.3,30,300/-. Therefore, taking into consideration the above aspects, the modified amount 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.	Permanent disability (55% x 3,000)	Rs.1,26,000/-	Rs.1,65,000/-	Enhanced
2.	Pain and sufferings	Rs.30,000/-	Rs.40,000/-	Enhanced
3.	Extra nourishment	Rs.15,000/-	Rs.15,000/-	Confirmed
4.	Loss of earning	Rs.30,000/-	Rs.30,000/-	Confirmed
5.	Damages to cloth	Rs.1,000/-	Rs.1,000/-	Confirmed
6.	Medical Expenses	Rs.49,300/-	Rs.49,300/-	Confirmed
7.	Transportation	Rs.5,000/-	Rs.10,000/-	Enhanced
8.	Attendant charges	-	Rs.10,000/-	Granted



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
9.	Loss of estate	-	Rs.10,000/-	Granted
	TOTAL	Rs.2,56,300/-	Rs.3,30,300/-	
		-		

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed. The 2nd respondent/Insurance Company is directed to deposit the entire compensation amount of Rs.3,30,300/- with interest @7.5% per annum, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.653 of 2013 on the file of the learned II Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Poonamallee, within a period of four weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the appellant is permitted to withdraw the entire award amount with proportionate accrued interest and costs by making necessary applications.



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The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs.

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Index : Yes/No

Internet : Yes/No

Speaking order / Non speaking order
mps

To

The II Additional District and Sessions Judge,
Motor Accidents Claims Tribunal,
Poonamallee.



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A.A.NAKKIRAN, J.

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