



C.M.A No.1345 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.1345 of 2022

Ambedkar

... Appellant

Vs.

1.Balasubramanian

2.The Divisional Manager,
HDFC ERGO General Insurance Co. Ltd.,
100 feet road, Solan Nagar,
Mudaliarpeta,
Puducherry -605 004.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to set aside the award dated 27.04.2021 in MACTOP.No.255 of 2019 on the file of the Motor Accident Claims Tribunal at Puducherry-cum- the Court of Special Officer-cum-Additional Sub-Judge, Puducherry and consequently, enhance the amount of compensation awarded to the appellant.



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For Appellants : Ms.G.Lavanya
for Mr.T.Saikrishnan

For Respondents : Mr.K.Poomalai for R2

JUDGMENT

The appellant herein is the victim of a road accident that took place on 30.09.2018 when his motorcycle is said to have been knocked from behind by a car bearing No.PY 01 U 3034 driven in a rash and negligent manner by R.W.3, its driver at the relevant time. In the accident, the appellant herein is stated to have suffered fracture to both his hands. Seeking compensation, he approached the Motor Accident Claims Tribunal, Puducherry cum the Court of Special Officer Cum Additional Sub-Judge, Puducherry with MCOP.No.255 of 2019. The Tribunal had found the appellant 50% negligent, and accordingly, it passed its award. In assessing the compensation, it relied on Ex.C1, the disability certificate issued by the Medical Board which evaluated the disability of the appellant as permanent disability at 39%, then it proceeded to award Rs.5,000/- for every percentage of disability, and after providing for other conventional heads, it awarded the total sum of Rs.1,96,000/- and the breakup is as below:



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Sl. No.	Description	Amount awarded by Tribunal (Rs)
1.	Permanent disability (14 x Rs.5,000/-)	70,000
2.	Pain and sufferings	40,000
3.	Loss of income (4 x 9,000)	36,000
4.	Transport	10,000
5.	Nutritious food	10,000
6.	Medical expenses	10,000
7.	Attender charges	10,000
8.	Comfort and amenities	10,000
	Total	Rs.1,96,000/- after 50% deduction =Rs.98,000/-

2.Since the appellant preferred this appeal challenging the quantum awarded by the Tribunal, this Court considers that notice to the first respondent is not necessary.

3.Aggrieved by the perceived inadequacy of the compensation awarded, the claimant is now before this Court with this appeal.

4.Heard Ms.G.Lavanya, learned counsel for the appellant, and Mr.K.Poomalai, learned counsel appearing for the second respondent.



5.The learned counsel for the appellant submitted that the Tribunal had relied on the testimony of R.W.3 to fasten 50% negligence on the victim of the motorcycle and in the process, it has overlooked other associated evidence. He also added that the notional income has been unrealistically fixed by the Tribunal.

6.Per contra, the learned counsel for the second respondent / the insurance company submitted that while the claimant / appellant contended that the accident had taken place when the cab driven by the R.W.3 has knocked it from behind, the real story is otherwise - it is the motorcycle that hit the cab from behind. The learned counsel added that the Tribunal, therefore, proceeded to rely on Ex.P.6, inspection report of the Motor Vehicle Inspector, to arrive at a conclusion that the case put forward by R.W.3 is the most probable version of the accident.

7.The case has two parts: Who is negligent, or to be precise, which version, as put forward by the claimant and R.W.3 is most probable. Since the Tribunal has relied on Ex.P.6, Accident Inspection Report of the Motor Vehicle Inspector to navigate through the conflicting versions of the accident, this Court chooses to commence its discussion from Ex.P6.



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A perusal of Ex.P6 shows that there is a wholesome damage to the bike from the headlight to the footrest on both sides and also to the rear brake pedal. However, the same Motor Vehicle Inspector does not chose to inspect the cab for the damage that it has suffered. In other words, this Court is interested to know whether the car has suffered damage to its front or the back. This is not available.

8.The next point is whether, in the absence of any material about the nature of damage which the offending vehicle has suffered, how to recreate the accident. Here, the appellant's theory is that because the motorcycle was hit from behind, the motorcycle suffered damage to its front portion. This appears slightly far-fetched given the nature of damage, which is wholly to the front portion of the bike and not much to its back. This Court may not be able to appreciate the case of the appellant totally. The truth very obviously lies in between. The Tribunal found that this meant mudstrick right at the middle by attributing 50% negligence to the appellant, whereas this Court considers that 25% would be an ideal percentage. The compensation awarded under the head 'permanent disability' is now increased from Rs.70,000/- to Rs.1,46,250/-. On other conventional heads of compensation, this Court chooses to



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interfere suitably and the details are as below:

Sl. No	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)	Award confirmed or enhanced or granted
1.	Permanent disability	70,000 (14 x Rs.5,000/-)	1,46,250	enhanced
2.	Pain and sufferings	40,000	50,000	enhanced
3.	Loss of income	36,000 (4 x 9,000)	54,000 (6 x 9,000)	enhanced
4.	Transport	10,000	10,000	confirmed
5.	Nutritious food	10,000	25,000	enhanced
6.	Medical expenses	10,000	10,000	confirmed
7.	Attender charges	10,000	20,000	enhanced
8.	Comfort and amenities	10,000	20,000	enhanced
	Total	1,96,000 after 50% deduction =Rs.98,000/-	3,35,250 after 25% deduction =Rs.2,51,437.5	enhanced by Rs.55,437.5/-

9.In fine, this appeal stands partly allowed, and the compensation is enhanced from **Rs.98,000/-** to **Rs.2,51,437.5/-**. The second respondent is now required to deposit the entire compensation amount with interest at



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7.5% per annum from the date of the claim petition till the date of deposit, less any amount already deposited within a period of six (6) weeks from the date of receipt of a copy of this judgement. On such deposit being made, the appellant is permitted to withdraw the award amount, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No Costs.

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Anu

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal,
Puducherry-cum- the Court of
Special Officer-cum-Additional Sub-Judge, Puducherry



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N.SESHASAYEE, J.
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