



C.M.A.No.2069 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2069 of 2021

P. Dhanapal

... Appellant / Petitioner

Vs.

1. V. Jaiprakash
2. The United India Insurance Company Limited,
No.22-B, P. R. Sundaram Iyyer Street,
Dharmapuri – 636 701.
3. The United India Insurance Company Limited,
Mutthaiah Complex,
No.1170, Mettur Road,
Erode District – 638 011

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 22.06.2020, made in M.C.O.P.No.170 of 2018, on the file of the Motor Accidents Claims Tribunal, Special District Court, Erode.

For Appellant	:	Mr. S. P. Yuaraj
For R1	:	Name Printed
For R2	:	Served
For R3	:	Mr. S. Arunkumar



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation granted by the Tribunal in the award passed in M.C.O.P.No.170 of 2018, dated 22.06.2020, on the file of the Motor Accident Claims Tribunal, Special District Court, Erode.

2. The parties are referred to herein according to their status and ranking before the Tribunal.

3. The case of the claimant is that on 01.07.2017 at about 11.30 p.m., the petitioner was driving Bharath Benz Lorry bearing Registration No.TN 88 C 3556, on Hosur to Krishnagiri National Highway, while he reached near Gopachandram 'U' turn, another lorry bearing Registration No.TN 70 E 7895 while taking 'U' turn came in a negligent manner and hit on the lorry driven by the claimant herein. Due to which, the claimant sustained multiple grievous injuries all over his body. Immediately after the accident, he was admitted into the Government Hospital, Hosur and Kaveri Hospital, Kovai and taking further treatment at Ganga Hospital, Kovai as in-patient and still today he was taking treatment as out-patient. A



crime case was also registered in Crime No.238 of 2017 under Sections 279, 338 and 304 (A) IPC against the driver of the lorry bearing Registration No.TN 70 E 7895 on the file of the Shoolagiri Police Station, Krishnagiri District. After discharged from the Hospital, the claimant has filed this claim petition seeking compensation for a sum of Rs.10,00,000/- for the injuries sustained by him.

4. The first respondent remained ex-parte before the Tribunal and has not contested the claim. The second respondent filed counter denying the negligent act on the part of the driver of the lorry belongs to the first respondent. The accident was occurred only due to the negligent driving of the claimant hence the respondents shall not liable to pay the compensation and they have also contended that the compensation claimed under various heads are on the higher side hence, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.3 were examined and Exs.P1 to P13 were marked. On the side of the respondents no witnesses was examined and Ex.R1 was marked. On the side of the Court witness, C.W.1 was examined and Ex.X1 was marked.



6. The Tribunal after considering the pleadings, oral and documentary evidence, in Point No.1 has held that the negligent act of the driver of the first respondent is responsible for the accident and in Point No.2, the Tribunal has quantified the compensation and awarded a sum of Rs.7,18,567/- along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization. The respondents have not filed any appeal challenging the quantum of compensation awarded.

7. Aggrieved over the quantum of compensation awarded, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel for the claimant has submitted that the claimant was a lorry driver met with accident and has suffered severe grievous injuries all over his body and also fracture of femur right leg. The Tribunal has not adopted multiplier method for calculating the loss of income of the injured for award of compensation and adopted percentage method and granted only meager sum of Rs.3,000/- per percentage of injury. Hence, the same is to be modified.



9. The learned counsel for the respondents-Insurance Company has submitted that after appreciating the evidence placed on record, the just compensation was awarded by the Tribunal under various heads, including the head disability. Hence, there is no reason to interfere the same to enhance the compensation. Hence prays to dismiss the appeal.

10. I have considered the submissions on both sides and also perused the materials placed on record.

11. The Tribunal in Point No.2 has considered the injuries sustained by the claimant. He has undergone treatment at Cauveri Hospital, Hosur as in-patient from 02.07.2017 to 14.07.2017. As per Ex.P6-Discharge Summary, the final diagnosis of the injury sustained by the claimant is recorded as follows:

“Final Diagnosis: Closed Communitated Fracture of Right Femur and open fibular fracture with muscle tear left leg.”

and procedure has also been recorded as follows:

“Procedure: ORIF with IM nail right femur and suturing with B/K POP slab left leg done under spinal



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anesthesia on 03.07.2017.”

12. Again the claimant was admitted into Ganga Hospital, Kovai on 14.08.2017 and was discharged on 25.08.2017. The following diagnosis and procedure was done by the claimant:

“Diagnosis:

- 1. Both knee PCL tear with PLC injury*
- 2. STATUS: Fracture shaft femur with IM Nail Insitu right side.”*

“Procedure:

15.08.2017: Arthroscopic PCL reconstruction with 6 strands hamstring graft and open PLC reconstruction with modified larson technique – Left Knee.

21.08.2017: Arthroscopic PCL reconstruction with quadriceps bone tendon graft with open PLC reconstruction with allograft Right Knee.”

13. The claimant was also referred for the Medical Board for assessing his disability and the Medical Board assessed his disability as 20%. The Tribunal held that the injury sustained by the claimant is not a functional disability, and granted Rs.3,000/- per percentage of injury and now the claimant seeks to modify the same. Eventhough the claimant claimed that, he is a driver by profession but no evidence to support the



same has been produced. The Tribunal has also considered this aspect and held that the claimant is to prove the avocation and adopted notional income for awarding compensation under the head loss of income for the treatment period. The injury sustained on the right femur was also been healed and has held by the Tribunal that there is no functional permanent disability. Under the said circumstances, this Court is of the view that there is no infirmity in the said finding for adopting percentage method instead of adopting multiplier method. However, this Court consistently awarded a sum of Rs.5,000/- per injury for the injuries sustained, during the accidents taken place in the year 2017. Accordingly, the compensation awarded under the head disability alone is modified from Rs.60,000/- to Rs.1,00,000/-.

14. As far as the compensation awarded under other heads are concerned, the Tribunal has given valid reasons for each and every head and this Court finds no infirmity in the said reasons and awarded compensation under other heads are just reasonable and the same requires no modification. The Tribunal has awarded a sum of Rs.1,35,000/- under the head pain and sufferings and this Court finds valid reasons has been given by the Tribunal for diagnosis and procedure and surgery was also conducted, this Court is



not inclined to interfere with the amount awarded under the head pain and sufferings and the same is hereby confirmed.

15. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Food and Nutrition	Rs.10,000/-	Rs.10,000/-	Confirmed
2.	Pain and sufferings	Rs.1,35,000/-	Rs.1,35,000/-	Confirmed
3.	20% disability	Rs.60,000/-	Rs.1,00,000/-	Enhanced
4.	Attender Charges	Rs.30,000/-	Rs.30,000/-	Confirmed
5.	Medical Expenses	Rs.4,23,567/-	Rs.4,23,567/-	Confirmed
6.	Transportation Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
7.	Temporary Loss of Income	Rs.50,000	Rs.50,000/-	Confirmed
	Total	Rs.7,18,567/-	Rs.7,58,567/-	Enhanced by Rs.40,000/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,18,567/- is hereby enhanced to Rs.7,58,567/- [Rupees Seven Lakhs Fifty Eight Thousand Five Hundred and Sixty Seven only] together with interest at the



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rate of 7.5% per annum from the date of filing 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 six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.170 of 2018, on the file of the Motor Accident Claims Tribunal, Special District Court, Erode. On such deposit, the appellant 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 without any formal application. Since this Court has enhanced the compensation, the appellant 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.

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No



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K.RAJASEKAR,J.

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To

1.The Special District Judge,
Motor Accidents Claims Tribunal,
Erode.

2.The Section Officer,
VR Section,
High Court,
Madras.

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