



C.M.A.No.2125 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

Civil Miscellaneous Appeal No.2125 of 2021

K. Balamurugan

... Appellant/petitioner

Vs.

1. The Managing Director,  
Tamil Nadu State Transport Corporation,  
(Villupuram – Divn.I) Ltd.,  
No.3/137, Salamedu, Vazhuthareddy,  
Villupuram – 605 602.
2. AJS Agencies,  
No.3, Khadar Thottam,  
BV Nagar, Nanganallur,  
Chennai – 600 114.
3. HDFC Ergo Gen. Insurance Co. Ltd.,  
New No.528, Old No.559,  
2<sup>nd</sup> Floor, Anna Salai,  
Teynampet, Chennai – 600 018.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 26.02.2021, made in M.C.O.P.No.2114 of 2015, on the file of the Motor Accidents Claims Tribunal, I Additional District & Sessions Judge, Cuddalore.



For Appellant : M/s. Ramya V. Rao  
For R1 : Mr.Santhosa Kumar  
For R2 : No appearance  
For R3 : Mr. Somasundar. N

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation granted by the Tribunal in the Award passed in M.C.O.P.No.2114 of 2015, dated 26.02.2021, on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore.

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

3. The case of the petitioner in brief is that on 17.04.2015 at about 5.30 hours he was travelling as a passenger in the Bus bearing Registration No.TN 25 N 0068 towards Chengalpattu on GST Road in a negligent manner and while the bus reached near Jeevan Hotel, Maraimalai Nagar a goods vehicle bearing Registration No.TN 22 CP 8787 came on GST Road in rash and negligent manner and suddenly turned right side to go to Maraimalai Nagar without any indication resulting which, the Bus hit



on the goods vehicle and the petitioner sustained multiple grievous injuries.

Subsequently, he has come forward with the claim petition claiming compensation of Rs.10,00,000/- for the injuries sustained by him in the road accident.

4. The first respondent disputed the claim and contended that the accident had occurred only due to the negligent act of the driver of the goods vehicle however the driver of the first respondent bus drove it with due care and caution, the accident had occurred hence the compensation has to be claimed only from the second and third respondents. They also disputed that the driver of the goods vehicle has not having valid driving licence at the time of accident. The claimant has to prove the age, avocation and income earned by him and also disability sustained by him in the accident. In any event, the compensation claimed by him on the higher side hence prays to dismiss the claim.

5. The third respondent has filed counter and disputed the claim made by the claimant and also contended that the first respondent bus driver has drove it in rash and negligent manner the accident had occurred and that the first respondent driver is only responsible for the accident



hence the first respondent has to pay the entire compensation to the claimant and also disputed that the first respondent bus driver has not having valid driving licence. Hence prays to dismiss the claim.

6. Based on the evidences placed on record, the Tribunal has quantified the compensation and awarded a sum of Rs.45,298/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.

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

8. It is submitted by the learned counsel for the claimant that the Tribunal has awarded compensation under the head disability by calculating per percentage method of Rs.3,000/- per percentage is on the lower side and also considering the nature of the injury sustained, the compensation awarded under the head pain and sufferings shall also to be increased. The Tribunal has not awarded compensation under the head loss of income and prays to grant the same and also enhance the compensation.



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9. The learned counsel for the Insurance Company had opposed the same and stating that the Tribunal after considering the evidences placed on record has rightly awarded just and reasonable compensation and there is no need for interference of the same and prays to confirm the award.

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

11. Based on evidence Ex.C1-Disability Certificate, the Tribunal has fixed the disability at 9% is proper and this Court is also accept the same however awarding a sum of Rs.3,000/- per percentage of injury needs to be revised. The evidence of P.W.1 shows that the petitioner has sustained fracture of Greater Tuberosity (Humerus) Let Hand, Injury on Left Shoulder, Injury on Back, Injury on Head and multiple grievous injuries all over the body and considering the nature of injury, this Court is of the view that fixing of Rs.4,000/- per percentage of injury is proper. Accordingly, a sum of Rs.36,000/- [4000 x 9%] is awarded under the head disability. The Tribunal has not awarded any amount towards loss of income since the



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petitioner is a driver by profession and he sustained fracture on hand, shoulder and head and considering the year of accident, i.e., 17.04.2015, this Court is inclined to fix a sum of Rs.12,000/- as the notional income and due to the injuries sustained he could not be able to do his avocation atleast three months and accordingly a sum of Rs.36,000/- [12000 x 3] is awarded under the head loss of income during treatment period.

11. The Tribunal has awarded a sum of Rs.10,000/- under the head pain and sufferings and Considering the nature of injury sustained by him and was treated in the Government Hospital and he has undergone surgery also hence, this Court is inclined modify the head pain and sufferings to Rs.20,000/-. The Tribunal has not awarded compensation under the head Loss of Amenities and this Court is also inclined to grant a sum of Rs.10,000/- for the head loss of amenities. The Tribunal has awarded a sum of Rs.6,000/- under the head Transportation charges and this Court is of the view the same is on the higher side and hence the same is to be reduced by Rs.3,000/-. The Tribunal has not award compensation under the head Extra Nourishment and this Court is inclined to grant a sum of Rs.6,000/- for the head Extra Nourishment. Based on the Medical Bills Ex-



P5, the Tribunal has awarded a sum of Rs.2,298/- under the head medical expenses and this Court is of the view the same is reasonable and the same is hereby confirmed. Considering the fact that the petitioner has admitted into various hospitals as in-patient and taking treatment, this Court is inclined to grant a sum of Rs.5,000/- under the head Attender charges Rs.5,000/-.

12. Thus, the compensation awarded 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 granted |
|-------|---------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                | Rs.27,000/-                     | Rs.36,000/-                       | Enhanced                               |
| 2.    | Pain and sufferings       | Rs.10,000/-                     | Rs.20,000/-                       | Enhanced                               |
| 3.    | Transportation            | Rs.6,000/-                      | Rs.3,000/-                        | Reduced                                |
| 4.    | Medical Bills             | Rs.2,298/-                      | Rs.2,298/-                        | Confirmed                              |
| 5.    | Loss of Amenities         | ---                             | Rs.10,000/-                       | Granted                                |
| 6.    | Loss of Income            | ---                             | Rs.36,000/-                       | Granted                                |
| 7.    | Attender Charges          | ---                             | Rs.5,000/-                        | Granted                                |
| 8.    | Extra Nourishment         | ---                             | Rs.6,000/-                        | Granted                                |
|       | <b>Total Compensation</b> | <b>Rs.45,298/-</b>              | <b>Rs.1,18,298/-</b>              | <b>Enhanced by Rs.73,000/-</b>         |



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.45,298/- is hereby enhanced to Rs.1,18,298/- [Rupees One Lakh Eighteen Thousand Two Hundred and Ninety Eight only] together 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 first respondent-State Transport Corporation 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.2114 of 2015 on the file of the Motor Accident Claims Tribunal, I Additional District and Sessions Court, Cuddalore. On such deposit, the appellant/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 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/claimant is directed to pay the necessary Court fee, if any, on the



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enhanced compensation. In other aspects, the award of the Tribunal shall stands confirmed. There shall be no order as to costs in the present appeal.

15.12.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The I Additional District and Sessions Judge,  
Motor Accidents Claims Tribunal,  
Cuddalore.

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



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K.RAJASEKAR,J.

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