



C.M.A. No. 2166 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2166 of 2021

Vijayabalaji

... Appellant / Petitioner

Vs.

1. M/s. P.K. Kaveri Minerals Industries,
No.567/5, Kaveri Gounder Thottam,
Puddur Village, Pannially Post,
Kaveripattinam,
Krishnagiri District - 635 112.

2. ICICI Lombard General Insurance
Company Limited,
ICICI Lombard House,
414, Veer Savarkar Marg,
Near Siddhi Vinayagar Temple,
Prabhadevi, Mumbai - 400 025.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 21.08.2020 made in M.C.O.P. No. 39 of 2017, on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Palacode.



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For Appellants : Mr. T. Senthil Velmurugan
For R1 : No Appearance
For R2 : M/s. Sree Vidhya

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 39 of 2017, dated 21.08.2020 on the file of the Subordinate Judge, Motor Accident Claims Tribunal, Palacode.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 04.01.2016, at about 07:30PM, the petitioner was riding a motor cycle bearing Registration No.TN-38-AR-3115 on Kaveripattinam to Palacode road, while he was passing Chikardhanahalli curve, a TATA ACE vehicle bearing Registration No.TN-24-H-1333 came in opposite direction in a rash and negligent manner and dashed against the two wheeler of the claimant, causing grievous injuries. A criminal case was registered against



the first respondent's driver in Cr.No.393/2016 U/s. 279, 337 of IPC on the file of Palacode Police. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.15,00,000/- along with interest.

4. The first respondent, who is the owner of the TATA ACE vehicle bearing Registration No.TN-24-H-1333 has not contested the claim and remained ex-parte. The second respondent - insurance company has filed a counter and contended that the accident was taken place only due to the negligence on the part of the deceased, who overtook one on-going vehicle without any signal in a rash and negligent manner and hit on the TATA ACE vehicle, which came in the opposite direction. The insurance company also contended that the driver of the TATA ACE vehicle has no valid driving licence at the time of occurrence and disputed the age, student ship, injuries and disability sustained of the claimant, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.9 were marked. On the side of the respondents,



R.W.1 and R.W.2 were examined and Exs.R.1, R.2 and X.1 were marked.

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6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the first respondent's driver is responsible for the accident. In point no.3, the Tribunal has quantified and granted compensation for a sum of Rs.2,28,527/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization. In point no.4, the Tribunal has fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimants.

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

8. The learned counsel appearing for the claimant submitted that the Tribunal has not properly considered the nature of injuries sustained by the claimant during the accident and adopted percentage method for granting compensation under the head disability. The Tribunal ought to have adopted multiplier method and awarded compensation and further submitted



that the compensation awarded under other heads is also on the lower side, hence prays to modify the award of the Tribunal.

9. Per contra, the learned counsel appearing for the respondents have submitted that the Tribunal based on the evidence placed on record has rightly fixed the compensation under the head disability, since there was no loss of income due to the injuries sustained by the claimant and also the compensation awarded under other heads by the Tribunal is just, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. Admittedly, in this case, the claimant has sustained grievous injuries and the Ex.P.2 - discharge summary, shows that the claimant has sustained following injuries: "Fracture shaft of (R) Radius, Fracture 10,11th Rib (R) side with No Pneumothorax/ Haemothorax, Laceration of (R) Lobe of Liver with Haemoperitoneum, Deep Abrasion Lower Back and Severe Bilateral subconjunctival Haemorrhage". Based on the Ex.P.9 - Disability



certificate, the Tribunal has held that the claimant herein has sustained injuries at the time of accident and he has sustained 33% permanent disability, it is also the fact that the claimant was 19 years old and studying in college at the time of occurrence and hence, there is no earning loss to him. Accordingly, the Tribunal has held that the disability sustained by the claimant is not classified as non functional disability, hence rightly adopted percentage method for awarding compensation. On perusal of the same, this Court is of the view that the injuries sustained by the claimant has not reduced any loss of income, hence as per the guidelines framed in the judgment of the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar*** reported in **[2011 ACJ 1]**, the injuries sustained by the claimant are treated as non functional disability, hence the disability fixed by the doctor is hereby accepted.

12. However, as per this Court judgment in ***M. Chinnathambi vs. S. Deepa and another*** reported in **[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]**, this Court has awarded Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016, hence, considering the date of accident, this Court is inclined to modify the award



of Rs.3,000/- per percentage of disability by the Tribunal to Rs.5,000/-, hence the total compensation granted under the disability is modified to Rs.1,65,000/- (Rs.5,000/- x 33% of disability).

13. The Tribunal has awarded compensation of Rs.40,000/- towards pain and suffering, Rs.5,000/- each under attender charges and transportation expenses and Rs.10,000/- each under extra nourishment and loss of amenities. Considering the age and nature of injuries sustained by the claimant, this Court finds that the compensation awarded under the above heads by the Tribunal are on the lower side, hence this Court is inclined to modify the above heads as follows: Rs.50,000/- towards pain and suffering, Rs.10,000/- each under the head attender charges and transportation expenses, Rs.20,000/- each under the head loss of amenities and extra nourishment. Based on Ex.P.8- medical receipts, the Tribunal has awarded Rs.59,527/- under the head medical expenses, this Court is inclined to confirm the same.

15. Accordingly, the award passed 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 reduced
1.	Disability	99,000/-	1,65,000/-	Enhanced
2.	Pain and Suffering	40,000/-	50,000/-	Enhanced
3.	Extra nourishment	10,000/-	20,000/-	Enhanced
4.	Attender charges	5,000/-	10,000/-	Enhanced
5.	Medical expenses	59,527/-	59,527/-	Confirmed
6.	Transportation expenses	5,000/-	10,000/-	Enhanced
7.	Loss of amenities	10,000/-	20,000/-	Enhanced
	Total Compensation	2,28,527/-	3,34,527/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,28,527/- is hereby enhanced to **Rs.3,34,527/- [Rupees Three Lakh Thirty Four Thousand Five Hundred and Twenty Seven only]** together along with interest at the 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 amount awarded 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.39 of 2017 on the file of the Subordinate Judge, Motor Accidents Claims



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Tribunal, Palacode. 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 now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

12.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Palacode.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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