



C.M.A. No. 1903 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1903 of 2021

T. Chandramohan

... Appellant / Petitioner

Vs.

1. The Municipal Corporation,
Coimbatore City Municipal Corporation,
Coimbatore District 641001.

2. United India Insurance
Company Limited,
CB Hub, 1st Floor,
104-A, Peramur Main Road,
Peramanur, Salem 636007.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 21.08.2018 passed in M.C.O.P. No.1614 of 2016 on the file of the Special Sub Judge, No.1, Motor Accidents Claims Tribunal, Salem.

For Appellant : Mr. C. Thangaraju

For R1 : Mr. K. Natarajan

For R2 : Mr. J. Chandran



JUDGMENT

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This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.1614 of 2016, dated 21.08.2018 on the file of the Special Sub Judge No.1, Motor Accidents Claims Tribunal, Salem.

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

3. The case of the claimant is that on 25.06.2016 at about 7:15AM, the claimant was riding a Honda Shine Motor Cycle bearing Registration No.TN-37-CP-5368 on Kovai Vellalore to Singanallur Petrol Bunk and when he reached near Royal Bakery, a lorry bearing Registration No.TN-37-AZ-5405 belongs to the first respondent, driven by its driver in rash and negligent manner, hit on the claimants motor cycle, causing grievous injuries to the claimant. A criminal case was also registered against the driver of the lorry in Cr.No.416/2016 U/s. 279, 337 of I.P.C on the file of the Coimbatore (Dt), TIW(E) Police station. Due to the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.25,00,000/- along with interest under section 166 of Motor Vehicles Act



and Rule 3 of Motor Vehicles Accident Claims Tribunal Rule.

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4. The first respondent is the owner of the lorry bearing Registration No.TN-37-AZ-5405 has filed a counter and disputed the manner in which the accident has taken place and also disputed the age, income, occupation, nature of injuries and disability of the claimant. The first respondent also contended that the accident has taken place only due to the rash and negligence on the part of the claimant not by the driver of the lorry, hence prays to dismiss the claim petition.

5. The second respondent - insurance company has filed a counter and denied all the facts in the claim petition and also disputed the age, occupation, income, nature of injury, period of treatment and disability of the claimant. The insurance company also contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 and



P.W.2 were examined and Exs.P.1 to P.15 were marked and on the side of the respondents no witnesses were examined and no exhibits were marked.

7. 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 driver of the lorry bearing Registration No.TN-37-AZ-5405 is responsible for the accident. In point no.2, the Tribunal has quantified and granted compensation for a sum of Rs.10,48,102/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

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

9. The learned counsel appearing for the claimant has 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 also submitted that the compensation awarded under other heads is also on the lower side,



hence prays to modify the award of the Tribunal.

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10. 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.

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

12. Admittedly, in this case, the claimant has sustained grievous injuries and the Ex.P.5 wound certificate shows that the claimant has sustained following injuries: "Comminuted peritrochanteric fracture left femur, severely comminuted proximal and middle tibia with fibula fracture right leg with gross swelling and Distal radius fracture with fracture base of middle phalanx with laceration 4th web space (Rt.). The claimant was assessed by a private doctor and the disability certificate issued by the doctor



is marked as Ex.P.13, which shows that the above injuries sustained by the claimant at the time of accident has restricted the movement of his various parts but the same has not been classified as non functional disability, hence the Tribunal has 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 earning capacity, 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.

13. 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.2,48,700/- (Rs.4,000/- x 49.74% of disability).



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14. The Tribunal has awarded compensation of Rs.30,000/- towards pain and suffering, Rs.5,000/- towards loss of amenities and Rs.10,000/- towards extra nourishment. This Court finds the compensation awarded under the above heads by the Tribunal are on the lower side on considering the nature of injuries sustained by the claimant, hence this Court is inclined to modify the same to Rs.40,000/- each towards pain and suffering and loss of amenities and Rs.20,000/- towards extra nourishment. Whereas the other heads are concerned, the Tribunal has awarded a just compensation, hence the same are hereby confirmed.

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.	Pain and Suffering	30,000/-	40,000/-	Enhanced
2.	Loss of income	---	---	---
3.	Medical expenses	8,32,132/-	8,32,132/-	Confirmed
4.	Transportation expenses	10,000/-	10,000/-	Confirmed
5.	Extra nourishment	10,000/-	20,000/-	Enhanced
6.	Attender charges	10,000/-	10,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
7.	Damage to clothes	1,750/-	1,750/-	Confirmed
8.	Loss of amenities	5,000/-	40,000/-	Enhanced
9.	Permanent disability	1,49,102/-	2,48,700/-	Enhanced
	Total Compensation	10,48,102/-	12,02,582/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,48,102/- is hereby enhanced to **Rs.12,02,582/- [Rupees Twelve Lakh Two Thousand Five Hundred and Eighty Two 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.1614 of 2016 on the file of the Special Sub Judge No.1, Motor Accidents Claims Tribunal, Salem. 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



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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.

24.11.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge No.1,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.

K. RAJASEKAR, J.

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