



WEB COPY



C.M.A.No.1104 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1104 of 2020

K.Vignesh

...Appellant

Vs.

1. BCG Tanners,
No.58/38, 13th Cross Street, New Colony,
Chromepet, Chennai.
2. The New India Assurance Company Limited,
No.45, Moore Street, Vth Floor, Chennai – 1.
Now the 2nd respondent having third (party cell) office at,
No.232, N.S.C. Bose Road, VI-Floor,
Chennai – 1.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the judgment and decree dated 06.10.2016 made in M.C.O.P.No.2306 of 2006 on the file of the VI-Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.K.Ponnuswamy for
M/s.Anand and Suryas

For Respondents : R1 – Exparte
Ms.C.Sangamithirai, for R2



C.M.A.No.1104 of 2020

WEB COPY

JUDGEMENT

Challenging the judgment and decree dated 06.10.2016 made in M.C.O.P.No.2306 of 2006 on the file of the VI-Small Causes Court, Chennai/ Motor Accident Claims Tribunal, the claimant is before this Court.

2. The case of the appellant is that, on 08.09.2005 at about 03.15 p.m., when the appellant, who was a minor at that time, was crossing the Radha Krishan Salai, Near Fire Station Department and was proceeding from South to North direction, a car bearing Regn.No.TN-22-AC-3637, owned by the 1st respondent, insured with the 2nd respondent came in a rash and negligent manner and hit the appellant, as a result of which, the appellant sustained grievous injuries all over his body. Thereby, the appellant filed a claim petition claiming a compensation of Rs.2,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.1,10,000/-. Aggrieved with the said order, the present appeal has been filed by the claimant seeking enhancement of the compensation fixed.



C.M.A.No.1104 of 2020

WEB COPY

3. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the driver of the 1st respondent, due to which, the appellant sustained grievous teeth injuries and fracture injuries and at the time of accident, the appellant was aged about only 17 years and pursuant to the above said accident, he is not able to lead his life in a normal manner. Further, the Doctor, who was examined as PW2, assessed the disability suffered by the appellant at the rate of 25%, by examining the injuries relating to dental and the Doctor, who was examined as PW3 assessed the disability suffered by the appellant at the rate of 40%, by examining the fracture injuries and in-toto the disability suffered by the appellant was fixed at the rate of 65%. However, without considering any of the above said facts, the tribunal, by adopting the guidelines framed under the Persons with Disabilities Act, had fixed the disability suffered by the appellant as 20% and by adopting a sum of Rs.3000/- per percentage of disability, had awarded a compensation of Rs.60,000/- towards Disability, which is perverse and unreasonable. Further, the



C.M.A.No.1104 of 2020

compensation awarded under other heads are also on the lower side and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, the assessment of disability made by the Doctors after a lapse of 10 years from the date of accident cannot be sustained, since they are not the Doctors who have treated the appellant at the time of accident. Hence, after considering the above said facts and after considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any further enhancement. Accordingly, he prayed for dismissal of the appeal.

5. Heard the learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the materials available on record.



C.M.A.No.1104 of 2020

6. The factum and manner of the accident is not disputed by the parties.

Therefore, this Court is not entering into the said aspect. The major grievances of the Appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the doctors assessed a disability of 65% in total, the tribunal held that the appellant suffered only 20% disability.

7. Though the tribunal fixed the disability suffered by the appellant at the rate of 20% by following the guidelines framed under the Persons with Disabilities Act, however, the disability suffered by the appellant is of partial permanent nature and not permanent, for which the appellant made a claim under the MV Act, which cannot be equated with the provisions of the Persons with Disabilities Act and, therefore, the reasons assigned by the Tribunal for reducing the disability is wholly perverse and not sustainable.

8. Further, it is to be pointed out that the percentage of disability varies from doctor to doctor. Hence, considering the deposition made by the Doctors



C.M.A.No.1104 of 2020

and the Disability certificates and also taking into account the nature of injuries suffered by the appellant, and in the absence of any contra evidence placed by the insurance company or contradiction in the deposition of the doctors, elicited by the insurance company, this Court fixes the disability sustained by the appellant at the rate of 45%. Further, as per the existing law at the relevant point of time, a sum of Rs.2,000/- per percentage of disability has to be adopted. Therefore, the amount under the head of disability stands enhanced to a sum of Rs.90,000/- ($45\% \times \text{Rs.}2,000/- = \text{Rs.}90,000/-$).

9. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation are just and reasonable and the same does not warrant any interference of this Court.

10. In view of the above, the compensation awarded by the Tribunal is modified as under :-



WEB COPY



C.M.A.No.1104 of 2020

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Towards Pain and sufferings	20,000/-	20,000/-
Towards Transport & Extra nourishment	7,500/-	7,500/-
Disability	60,000/-	90,000/-
Attender Charges for 3 days	1,500/-	1,500/-
Damages to clothes	500/-	500/-
Loss of amenities	10,000/-	10,000/-
Medical expenses	8,141/-	8,141/-
Future Medicine Expenses	2,000/-	2,000/-
Total	1,09,641/-	1,39,641/-

11. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.1,09,641/-** to **Rs.1,39,641/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No. 2306 of 2006 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the



C.M.A.No.1104 of 2020

Tribunal is directed to transfer the said amount directly to the bank account of the Appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. There shall be no order as to costs in the present appeal.

29.11.2023

skt

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

- 1.The Motor Accident Claims Tribunal (VI-Small Causes Court),
Chennai.
- 2.The Section Officer,
V.R. Section, High Court, Madras.



WEB COPY



C.M.A.No.1104 of 2020

M.DHANDAPANI, J.

skt

C.M.A.No.1104 of 2020

29.11.2023