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C.M.A. No. 2161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2161 of 2023

S. Selvaraj

... Appellant

Vs.

1.Srinivas Kesineni

2.ICICI Lombard General Insurance Company Limited,
First Floor building, No.142, E.C.R. Road,
Count palayam, Puducherry.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 18.12.2019 made in M.A.C.T.O.P. No.21 of 2015 on the file of Motor Accident Claims Tribunal and Chief Judicial Magistrate, Chengalpattu.

For Appellant : Ms. R. Reena

For Respondents : Mrs. R. Sree Vidhya, for R2
R1 – Ex parte



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JUDGMENT

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The claimant has preferred the instant appeal seeking enhancement of compensation.

2. The appellant filed the claim petition stating that on 16.11.2012 at 01.30 pm, while he was trying to step into the bus, which belonged to the first respondent and insured with the second respondent herein, the bus driver moved the bus in a rash and negligent manner, as a result of which the appellant was thrown away from the bus and sustained grievous injuries.

3. The first respondent / owner of the offending vehicle remained ex parte before the Tribunal.

4. The second respondent filed a counter stating that the accident took place due to the negligence of the appellant who had step down from the moving bus; and that the claim of compensation was excessive.



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5. The appellant examined himself as PW.1 and marked Ex.P1 to Ex.P8. The second respondent neither examined any witness nor marked any document. Court document was marked as Ex.C1 / Disability certificate issued by Medical Board.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the bus insured with the second respondent and the appellant had suffered functional disability to the extent of 65% and directed the second respondent herein to pay a compensation of Rs.8,53,420/- to the appellant.

7. The learned counsel for the appellant submitted that the appellant had deposed before the Tribunal that he was engaged in Chips Manufacturing business and earning Rs.30,000/- per month. But the Tribunal had taken a meagre notional income of Rs.6,500/- per month; and that the Tribunal had not considered the future prospects. The learned counsel further submitted that the award under other heads are also meagre and requires enhancement.



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8. Since the first respondent remained ex parte before the Tribunal, the learned counsel for the appellant made an endorsement to dispense with notice to R1. hence, notice to R1 is dispensed with.

9. The learned counsel for the second respondent per contra submitted that the award of the Tribunal is just and reasonable and no interference is called for.

10. The only question involved in the instant appeal is: –

Whether the compensation awarded by the Tribunal is just and reasonable?

11. On perusal of the records, it is seen that the appellant had deposed before the Tribunal that he was engaged in Chips Manufacturing business. However, no document has been filed to either prove the avocation or income of the appellant. The appellant was aged 47 years at the time of the accident.



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12. Considering the age of the appellant, his avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income as Rs.12,000/- per month. The award of the Tribunal fixing 65% functional disability considering the nature of injuries and the disability certificate issued by the Medical Board, is justified and hence, no interference is called for. Further, it is seen that the second respondent has not challenged the said finding. In the circumstances, this court is of the view that the appellant would also entitled to 25% enhancement towards future prospects. Therefore, the compensation under the head disability has to be: -

$$12,000+3000(12000 \times 25\%) \times 12 \times 13 \times 65/100 = \text{Rs.}15,21,000/-$$

It is also seen that the appellant had taken treatment as inpatient for 15 days. Considering the said fact and that his leg was amputated, the attender charges is enhanced to Rs.20,000/-. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,53,420/- to Rs.17,30,320/-, break-up is as follows: -



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical expenses	64,820/-	64,820/-	Confirmed
2.	Expenses towards conveyance	18,500/-	18,500/-	Confirmed
3.	Extra nourishment	5,000/-	5,000/-	Confirmed
4.	Attender charges	5,000/-	20,000	Enhanced
5.	Damages for clothing and articles	1,000/-	1,000/-	Confirmed
6.	Disability	6,59,100/-	15,21,000/-	Enhanced
7.	Pain and suffering	50,000/-	50,000/-	Confirmed
8.	Loss of future amenities	50,000/-	50,000/-	Confirmed
	Total	8,53,420/-	17,30,320/-	Enhanced by Rs.8,76,900/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,53,420/- is hereby enhanced to Rs.17,30,320/- together with interest at 7.5% per annum from the date of petition till the date of deposit. It is made clear that the appellant is not entitled for any interest for the delay period on



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the amount of Rs.8,76,900/- enhanced by this Court as per the order of this Court dated 01.09.2023 made in C.M.P.No.17384 of 2023 in C.M.A.SR.No.88886 of 2023. The second respondent / Insurance Company is directed to deposit the enhanced award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the same, along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

22.09.2023

Index: Yes/No

Neutral Citation: Yes / No

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SUNDER MOHAN, J.

AT

To

- 1.The Motor Accident Claims Tribunal and Chief Judicial Magistrate,
Chengalpattu.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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22.09.2023