



C.M.A.No.1014 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 12.10.2023**

**CORAM**

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

**C.M.A.No.1014 of 2017**

N.Pathanjali  
S/o.Natarajan

... Appellant / Petitioner

Vs.

1. Kotteswara Chowdry

2. ICICI Lombard General Insurance  
Company Limited,  
No.140, Nungambakkam High Road,  
Chennai - 600 034.

... Respondents / Respondents

**PRAYER :** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2014 made in M.C.O.P.No.4981 of 2012 on the file of the Motor Accidents Claims Tribunal, Court of Small Causes - III, Chennai.



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For Appellant : Ms.S.Subadra  
for Ms.M.Malar

For Respondents : Mrs.R.Sreevidhya for R2  
R1 - Ex-parte before Lower Court

## J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.4981 of 2012 filed by the claimant, the petitioner has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The Petitioner alleged to be earning a sum of Rs.75,000/- per month, met with an accident. On 04.01.2012 when the petitioner was riding the motorcycle, a car driven by its driver in a rash and negligent manner, dashed against the petitioner in which the petitioner is alleged to have suffered injuries for which he was admitted in the hospital and due to the loss suffered on account of the accident, the claimant, claiming



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compensation for the injuries suffered and also for loss of income, had filed the claim petition. The said claim was resisted by the Insurance Company / second respondent. The first respondent is the owner of the car and the second respondent is the Insurance Company.

3. The claimant has filed the claim petition claiming compensation of a sum of Rs.85,50,000/-. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P22 were marked. The Insurance Company did not let in any evidence either orally or documentary. The Tribunal, after analysing the oral and documentary evidence available on record, awarded a compensation of Rs.4,42,112/- and directed the second respondent / Insurance Company to pay the same to the appellant / claimant.

4. The learned counsel appearing for the claimant / petitioner submitted that as regards the compensation awarded towards loss of disability, the Tribunal fixed the disability as 65% instead of 70% and



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hence, the same may be enhanced to 70%. He further submitted that, when the doctor had clearly deposed about the injuries and the disability suffered by the claimant, the amount of Rs.2,000/- per percentage of disability awarded by the Tribunal is wholly inadequate. Further, since the appellant has suffered 70% disability, he is entitled for claiming compensation towards loss of income by applying multiplier method and hence, he prays for setting aside the award.

5. In support of his contention, the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of *Sandeep Khanuja Vs. Atul Dande and another* reported in **2017 (1) TN MAC 410 (SC)**.

6. The first respondent remained ex-parte before the Tribunal.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company fairly submitted that at the time of



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accident, the disability per percentage is Rs.3,000/-, but in the present case, the Tribunal awarded only Rs.2,000/-. He further submitted that if the appellant establishes that he has suffered with the functional disability and he is not able to avocate even after the accident and if it is established by way of oral or documentary evidence, then this Court can adopt the multiplier method for functional disability. Further, the Tribunal has awarded a sum of Rs.50,000/- under the head loss of income for three months and hence, the Tribunal after taking into consideration all the relevant documents has rightly fixed the compensation, which does not require any interference except the head disability.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. The factum of the accident and the negligence is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The



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only grievance of the claimant is with regard to the quantum of compensation awarded under the head disability and loss of income.

10. It is seen from the records that, though the doctor has assessed the disability at 70%, the Tribunal has fixed the disability at 65%. Considering the nature of injuries, this Court is of the view that the disability ought to have been fixed at 70%, and further, Rs.2,000/- awarded per percentage is on the lower side and the same is enhanced to Rs.3,000/- and hence, the compensation awarded under the head disability is enhanced to Rs.2,10,000/- (70% X Rs.3,000/-).

11. On perusal of the decision cited *supra* which makes it clear that, the Apex Court by exercising its power arrived a conclusion that, the appellant being a Chartered Accountant, aged about 30 years sustained multiple injuries and operated thrice and steel rod was planted in his leg and hence, the Apex Court applied the multiplier method. However, in the present case, the appellant was treated as inpatient only for 11 days from



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04.01.2012 to 14.01.2012 and thereafter, he was not admitted again. Hence, this Court easily arrived at a conclusion on perusal of the documents that the appellant has suffered functional disability and the avocation after the accident is not affected.

12. Considering the age, avocation and the nature of injuries sustained by the appellant, this Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference. However, insofar as the compensation awarded towards Extra Nourishment is concerned, this Court feels that a sum of Rs.10,000/- is meager and the same is enhanced to Rs.20,000/-. Further the compensation awarded for the Damage to Clothing of Rs.500/- is also meager and the same is enhanced to Rs.2,000/-.

13. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under:



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| <i><b>S.No</b></i> | <i><b>Head of Compensation</b></i> | <i><b>Amount awarded by the Tribunal (Rs)</b></i> | <i><b>Amount awarded by this Court (Rs)</b></i> |
|--------------------|------------------------------------|---------------------------------------------------|-------------------------------------------------|
| 1                  | Loss of Income                     | Rs.50,000/-                                       | Rs.50,000/-                                     |
| 2                  | Transport to Hospital              | Rs.15,000/-                                       | Rs.15,000/-                                     |
| 3                  | Extra Nourishment                  | Rs.10,000/-                                       | <b>Rs.20,000/-</b>                              |
| 4                  | Damage to Clothing                 | Rs.500/-                                          | <b>Rs.2,000/-</b>                               |
| 5                  | Damage to Vehicle                  | Rs.31,239/-                                       | Rs.31,239/-                                     |
| 6                  | Medical Expenses                   | Rs.1,05,373/-                                     | Rs.1,05,373/-                                   |
| 7                  | Attender Charges                   | Rs.20,000/-                                       | Rs.20,000/-                                     |
| 8                  | Loss of Amenities                  | Rs.25,000/-                                       | Rs.25,000/-                                     |
| 9                  | Physiotherapy Charges              | Rs.5,000/-                                        | Rs.5,000/-                                      |
| 10                 | Pain and Suffering                 | Rs.50,000/-                                       | Rs.50,000/-                                     |
| 11                 | Disability (70% X Rs.3,000/-)      | Rs.1,30,000/-                                     | <b>Rs.2,10,000/-</b>                            |
|                    | <b>Total</b>                       | <b>Rs.4,42,112/-</b>                              | <b>Rs.5,33,612/-</b>                            |

14. In the result, this civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal at Rs.4,42,112/- is hereby enhanced to Rs.5,33,612/- together with interest @ 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 entire award



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amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.4981 of 2012 on the file of the Motor Accidents Claims Tribunal, Court of Small Causes - III, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. No costs.

**12.10.2023**

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Motor Accidents Claims Tribunal,  
Court of Small Causes - III,  
Chennai.
2. The Section Officer,  
V.R. Section,  
High Court, Chennai.



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**M.DHANDAPANI, J.**

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