



CMA.No.1346 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2023

CORAM

**THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN**

**C.M.A.No.1346 of 2017**

N.Parthasarathy

... Appellant

..Vs..

1.G.Neelamegam  
(Remained ex parte before the trial court)

2.Future Generali India Insurance Co., Ltd.,  
Karumuthu Nilayam, 1<sup>st</sup> floor North Wing,  
O.No.758, N.No.192, Anna Salai,  
Chennai 600 002.

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2014 made in MACTOP.No.1242 of 2010 on the file of the Motor Accident Claims Tribunal (IV Judge, Small Causes Court, Chennai).

|                 |                                                                               |
|-----------------|-------------------------------------------------------------------------------|
| For Appellant   | : Mr.M.Mahendran<br>for M/s.N.M.Muthurajan                                    |
| For Respondents | : Set ex parte - R1<br>Mr.E.Rajadurai for R2<br>for Mr.M.B.Gopalan Associates |

### **JUDGMENT**

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 31.01.2014



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passed by the IV Judge, Small Causes Court, Chennai / Motor Accident  
Claims Tribunal, in MACTOP.No.1242 of 2010.

2. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

3. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

| <i><b>Heads</b></i>          | <i><b>Award Amount<br/>(Rs.)</b></i> |
|------------------------------|--------------------------------------|
| Loss of earning<br>(5000 x5) | 25,000/-                             |
| Transport                    | 7000/-                               |
| Extra Nourishment            | 7,000/-                              |
| Medical Expenses             | 10,000/-                             |
| Pain & Sufferings            | 25,000/-                             |
| Disability (40%)             | 72,000/-                             |
| Total                        | <b>1,46,000/-</b>                    |

4. The learned counsel appearing for the appellant has submitted that the Judgment of the lower court is contrary to law and weight of evidence. He further submitted that the Tribunal failed to note that the thing “under



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influence of alcohol” for a person is to be proved independently by examining doctor and other related evidence. It has erred in fixing 20% contributory negligence on the part of the appellant. The Tribunal has awarded a meagre sum of Rs.25,000/- only under the head of pain and sufferings for grievous injuries sustained by the appellant. Though the appellant has sustained 50% partial and permanent disablement, the Tribunal has re-assessed at 40% without any contra evidence and awarded only Rs.72,000/- at the rate of Rs.1800/- per percentage which is incorrect. It has failed to grant the compensation for disablement not only on the basis of percentage of disablement, but also depending upon the nature of injuries and age of the victim as well. The appellant was in-patient at Government Hospital for 24 days and subsequently continued out- patient treatment for about one year. It has also erred in awarding Rs.25000/- towards loss of earning. Also, the compensation awarded under the other heads are also very meagre. It has erred in fixing the rate of interest at 7.5% and the same is to be enhanced and hence, he prayed for enhancement of compensation.

5. The learned counsel appearing for the second respondent/ Insurance Company has submitted that after considering the oral and documentary evidence on record, the Tribunal has awarded just and



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reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

6. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record. The first respondent has remained exparte before the Tribunal.

7. Since the appellant was aged about 42 years at the time of accident as per Ex.P1/copy of FIR and Ex.P10/copy of driving license and there are four dependents for the appellant and he was a tender coconut retail vendor earning Rs.400/- per day, the assessment of the Tribunal at Rs.5000/- per month towards loss of earning, is on the lesser side. Hence, considering the year of accident and the age of the appellant, this Court is inclined to fix Rs.6500/- as monthly income of the appellant. Due to the grievous injuries sustained by him, he would have taken treatment for atleast five months and hence his loss of earning capacity is assessed at Rs.32,500/-(6500 x 5 months) by this court.

8. P.W.1 deposition shows that he sustained injuries in the accident



and immediately he was taken to the Government Hospital, wherein he was treated as in-patient. A perusal of Ex.P11/discharge summary would show that the appellant sustained fracture posterior dislocation of right hip with fracture of right tibial spine and was treated as in-patient from 24.01.2010 to 18.02.2010 and underwent surgery thereby ORIF with plating was done. Ex.P13 the photograph with CD shows the nature and gravity of the injuries sustained by the claimant. He further deposed that he was working as Tender coconut retail vendor and earning Rs.400/- per day at the time of accident and after the accident, he finds difficulty in sitting cross legged, climbing steps, standing, walking and lifting weight. PW2 has assessed the disability of the appellant at 50% for the injuries sustained by him and he is not able to do his business. Upon perusing Ex.P19/x-ray, PW2/Doctor has assessed the disability of the appellant at 50% and issued Ex.P18/disability certificate. PW2 further deposed that he has not seen the further treatment records and has not filed X-ray report in support of his assessment. In such circumstances, the Tribunal has fixed 40% disability for the injuries sustained by the appellant. Considering the age of the appellant, the Tribunal has awarded Rs.1800/- per percentage and thus arrived at Rs.72000/- (1800x 40%) under the head of disability which is incorrect and hence the same needs re-visit. Considering the age of the appellant/claimant



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and nature of injuries, this court is inclined to fix Rs.3000/- per percentage

and thus arrived at Rs.1,20,000/-(3000 x 40%). From the records, it is seen

that he has taken continuous treatment in private hospitals even after discharge from the Government Hospital. This Court is of the considered view that due to the nature of grievous injuries sustained by the appellant and the period of treatment as in-patient and outpatient, he has incurred transport expenses and he might have taken nutritious food and hence this court is inclined to grant a sum of Rs.10,000/- each towards Transport to Hospital and Extra Nourishment instead of Rs.7000/- each as assessed by the Tribunal.

9. A Perusal of Ex.P11/Discharge summary shows that the claimant has taken treatment as in-patient in Government General Hospital from 24.01.2010 to 18.02.2010. After the accident, he could not do his day to day need by himself without the help of attender during the treatment period and he also finds it difficulty in sitting cross legged, climbing steps, standing , lifting weight. From the records, it is seen that due to the accident that has occurred on 24.01.2010, the appellant has underwent surgery of ORIF with plating was done and he finds it difficulty in walking, standing, climbing steps and playing, but the Tribunal has awarded a



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meagre sum of Rs.25,000/- towards Pain and sufferings and hence the same needs revisit. Hence, a sum of Rs.30,000/- is fixed by this court towards Pain and sufferings.

10. Insofar as the other head such as medical expenses is concerned, the assessment of the compensation awarded by the Tribunal is just and reasonable compensation and it does not call for any interference by this Court.

11. In fine, the re-structured compensation, item-wise, would be thus:

| <i><b>Heads</b></i>      | <i><b>Amount<br/>awarded by<br/>the Tribunal<br/>(Rs.)</b></i> | <i><b>Award Amount<br/>by this Court<br/>(Rs.)</b></i> |
|--------------------------|----------------------------------------------------------------|--------------------------------------------------------|
| Loss of earning capacity | 25000/-<br>(5000x5)                                            | 32,500/-<br>(6500x5)                                   |
| Transport to Hospital    | 7,000/-                                                        | 10,000 /-                                              |
| Extra Nourishment        | 7,000/-                                                        | 10,000/-                                               |
| Medical Expenses         | 10,000/-                                                       | 10,000/-                                               |
| Pain & Sufferings        | 25,000/-                                                       | 30,000/-                                               |
| Disability (40%)         | 72,000/-                                                       | 1,20,000/-                                             |
| <b>Total</b>             | <b>1,46,000/-</b>                                              | <b>2,12,500/-</b>                                      |



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12. In the result,

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a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs.1,46,000/- to Rs.**2,12,500/-** along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of MACTOP.No.1242 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the first respondent/owner of the vehicle, in accordance with law. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

**10.04.2023**  
**(4/4)**

Index : Yes/No

Internet : Yes/No

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To

1. The Motor Accidents Claims Tribunal,  
IV Judge, Small Causes Court, Chennai).
2. The Section Officer,  
V.R.Section,  
High Court, Madras.



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**A.A.NAKKIRAN, J**

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