



C.M.A.No.1816 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2023

PRONOUNCED ON : 26.05.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.1816 of 2017

C.Adhikesavan ... Appellant

vs.

1.Mr.Prathap Kumar

2.ICICI Lombard General Insurance Co. Ltd.,
No.140, 2nd Floor, Chottabhai Centre,
Nungambakkam High Road, Chennai-34. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against decree and judgment dated 05.12.2016 made in M.C.O.P.No.4247 of 2014 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mrs.R.Sreevidhya [R2]
R1- No Appearance

JUDGMENT

Not satisfied by the Award of the Motor Accident Claims



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Tribunal, (IV Small Causes Court), Chennai, in M.C.O.P.No.4247 of 2014 dated 05.12.2016, the sole claimant herein has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.4,00,000/- for the injuries sustained by the claimant in a road accident that had taken place on 12.05.2014 and the learned Tribunal has passed an award of Rs.1,81,300/- with 7.5% interest p.a. from the date of numbering of petition, till the date of realisation.

3. Reiterating the grounds of appeal, the learned counsel for the appellant Mr.K.Varadha Kamaraj would argue that the disability assessed, was reduced from 50% to 35% is not correct: Per percentage Rs.4,000/- may be granted. The amounts granted towards extra nourishment, transport charges, attender charges, loss of amenities are on the lower side. He would further argue that despite availing of Leave, Leave Order-Ex.P9, no amount was



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granted towards loss of earning. To buttress his arguments, the

following judgments were cited:

- (i) Lakshmi v. M.Shanmuganathan reported in 2019 (1) TN MAC 571.
- (ii) Shriram General Insurance Co. Ltd., v. U.Nittinkumar reported in 2022 (1) TN MAC 223 (DB).
- (iii) Iffco Tokio General Insurance Co. Ltd., v.S.Kannadasan reported in 2014(1) TN MAC 663.

4. Per contra, Mrs.R.Sreevidhya, learned counsel appearing for the 2nd respondent / Insurance Company would vehemently argue that the learned Tribunal after taking into consideration the injuries sustained by the claimant based on the oral and documentary evidence has granted compensation of Rs.1,81,300/- which is a well reasoned order, need not be interfered.

5. The manner in which the accident had taken place is not in dispute. The claimant is stated to be a bus driver. The main grievance of the claimant is that the disability which was assessed at



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50% was reduced by the Tribunal to 35% is not correct. The

Discharge Summary Ex.P2 which was issued by B.M.Orthopaedic Hospital, Chennai reads to the effect that the claimant was in the hospital as an inpatient for five days. Due to the accident, the claimant sustained fracture of left distal radius and fracture of right distal febulla and Dr.K.J.Mathiazhagan-PW2 has assessed the disability as 50%.

6. No doubt, the claimant having sustained two fractures at the age of 51 years, would definitely face difficulties during his work as driver of the bus. Therefore, placing reliance upon the medical evidence coupled with treatment records as mentioned supra, it is reasonable to fix the disability as 40%, and per percentage Rs.3,500/- is granted then it would come to Rs.1,40,000/-.

7. Next grievance of the claimant is that no amount was granted under the loss of income. From Ex.P8 -Salary Slip, it is discernible that the claimant was drawing monthly salary of around Rs.29,000/-. The Tribunal has held that as he has gone on leave as per Ex.P9 Leave Order, he has no loss of income. The fact that on



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account of the accident, he has lost his earned leave at his credit. As

per law, for loss of earned leave, the claimant is entitled to be compensated. For the purpose of loss of income during treatment period, for four months, an amount of Rs.1,16,000/- (Rs.29,000/- X 4 months) is granted towards loss of income. An amount of Rs.9,000/- is granted in addition to the amount already granted under the head of attender charges and for loss of amenities additionally an amount of Rs.10,000/- is granted. Similarly, towards extra nourishment a sum of Rs.4,000/- is granted in addition to the amount already granted. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Disability	Rs. 1,05,000/-	Rs.1,40,000/-	Enhanced
2	Pain and Sufferings	Rs. 35,000/-	Rs. 35,000/-	Confirmed



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S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
3	Extra Nourishment	Rs. 3,500/-	Rs. 7,500/-	Enhanced
4	Transport to Hospital	Rs. 3,500/-	Rs. 3,500/-	Confirmed
5	Damages to Clothes	Rs. 500/-	Rs. 500/-	Confirmed
6	Attender Charges	Rs. 1,000/-	Rs. 10,000/-	Enhanced
7	Medical Expenses	Rs. 25,807/-	Rs. 25,807/-	Confirmed
8	Future Medical Expenses	Rs. 3,500/-	Rs. 3,500/-	Confirmed
9	Loss of Amenities	Rs. 3,500/-	Rs. 13,500/-	Enhanced
10	Loss of Income for four months	NIL	Rs.1,16,000/-	Granted
	Total	Rs.1,81,307/-	Rs.3,55,307/-	
	Rounded to	Rs.1,81,300/-	Rs.3,55,300/-	

8. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,81,300/- to **Rs.3,55,300/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.



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WEB COPY 9. In the result,

- (i) The Civil Miscellaneous Appeal is partly allowed. No costs.
- (ii) The compensation awarded by the Tribunal is enhanced from Rs.1,81,300/- to **Rs.3,55,300/-**.
- (iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.3,55,300/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.4247 of 2014 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.
- (iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.



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26.05.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

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

R.KALAIMATHI, J.,
ssn

**Pre-delivery judgment in
C.M.A.No.1816 of 2017**



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