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C.M.A.No.1897 of 2017

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

DATED: 09.02.2023

CORAM

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

C.M.A.No.1897 of 2017

M.Sthanu Shankar

.. Appellant

Vs.

1.M.Vetrivel Murugan  
2.The Branch Manager  
Cholamandalam M.S General  
Insurance Company Limited  
Dare House, 2nd Floor, New No.2  
NSC Bose Road, Chennai-1.

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.11.2013 made in MCOP No.396 of 2010 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Vellore.

For Appellant : Mr.T.Meganathan  
For Mr.R.Nalliyappan

For Respondents : No Appearance



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## J U D G M E N T

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The judgment and decree dated 22.11.2013 passed in MCOP No.396 of 2010 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Vellore, is under challenge in the present Civil Miscellaneous Appeal.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.2,44,215/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

| <i><b>Heads</b></i>                         | <i><b>Award Amount<br/>(Rs.)</b></i> |
|---------------------------------------------|--------------------------------------|
| Disability of 44% at Rs.2000 per percentage | 88,000/-                             |
| Pain and Sufferings                         | 50,000/-                             |



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| <i><b>Heads</b></i>   | <i><b>Award Amount<br/>(Rs.)</b></i> |
|-----------------------|--------------------------------------|
| Extra Nourishment     | 25,000/-                             |
| Transport Expenses    | 2,000/-                              |
| Medical Bills (Ex.P9) | 79,215/-                             |
| <b>Total</b>          | <b>2,44,215/-</b>                    |

4. Before the Tribunal, the Appellant/claimant has filed 12 documents which were marked as Ex.P1 to Ex.P12 and examined himself as PW1 and the Doctor, who examined the claimant as PW2. On the side of the 2nd respondent/Insurance Company, neither any document was filed nor any witness was examined before the Tribunal. The 1st respondent was set exparte.

5. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. The appellant/claimant sustained multiple fractures due to the accident and had taken treatment as inpatient



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for a period of seven days as seen from the exhibit P8 discharge summary.

The doctor assessed the disability at 50%. However, the Tribunal has reduced the same and has assessed the disability at 44%. The disability compensation awarded by the Tribunal as seen from the impugned award is Rs.88,000/- calculated at Rs.2,000/- per percentage of disability and the same is to be enhanced. No amount was awarded under the head of attender charges. Further, the quantum of compensation awarded under the other heads are very meagre and hence, he prays to enhance the award.

6. The accident occurred on 28.04.2010 at about 12.30 a.m at Katpadi to Vellore Road, Chittur bus stand, Vellore. The Katpadi police station registered a case in Crime No.299 of 2010 under Sections 279 and 337 IPC. The appellant/claimant sustained grievous injuries viz., i) Grade II open fracture shaft of left femur, ii) Grade I, open fracture both bones left leg, iii) closed fracture left medial malleolus and injuries all over his body. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The negligence was attributed



against the driver cum owner of the car, who is the 1<sup>st</sup> respondent herein.

The findings of the Tribunal is that the car driver had driven the vehicle in a rash and negligent manner which resulted in an accident.

7. The Doctor (PW2) has assessed the disability of the Appellant/claimant at 50%. However, the Tribunal without assigning any valid reason, has reduced the disability to 44%. In the considered view of this Court, after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the Appellant/claimant at 50%. As far as the quantum of compensation is concerned, the Tribunal has fixed a sum of Rs.2,000/- for one percentage of disability. Therefore, this Court is of the considered opinion that the accident occurred in the year 2010 and fixing a sum of Rs.2,000/- is on the lesser side. The Appellant/claimant was working as Marketing Executive and he had taken his treatment for about 7 days as seen from Ex.P8 discharge summary. Thus, a sum of Rs.3,000/- for one percentage of disability would be appropriate considering the fact that the accident occurred during the year 2010. Further, the compensation



awarded by the Tribunal under the head of transportation is inadequate and the same has to be enhanced. Accordingly, it is just and reasonable to enhance the compensation of Rs.5,000/- towards transportation. The Tribunal has failed to award any amount towards attender charges. In the considered view of this Court, it would be appropriate to award a compensation of Rs.15,000/- towards attender charges.

8. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

9. For the forgoing reasons, the award passed by the Tribunal is modified as follows:

| <i><b>Heads</b></i> | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Award Amount<br/>by this Court<br/>(Rs.)</b></i> |
|---------------------|------------------------------------------------------------|--------------------------------------------------------|
| Disability          | (Rs.2000 x 44)<br>88,000/-                                 | (Rs.3000 x 50)<br>1,50,000/-                           |
| Pain and Suffering  | 50,000/-                                                   | 50,000/-                                               |



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| <i><b>Heads</b></i> | <i><b>Amount awarded<br/>by the Tribunal<br/>(Rs.)</b></i> | <i><b>Award Amount<br/>by this Court<br/>(Rs.)</b></i> |
|---------------------|------------------------------------------------------------|--------------------------------------------------------|
| Extra Nourishment   | 25,000/-                                                   | 25,000/-                                               |
| Transportation      | 2,000/-                                                    | 5,000/-                                                |
| Medical Bills Ex.P9 | 79,215/-                                                   | 79,215/-                                               |
| Attender Charges    | Nil                                                        | 15,000/-                                               |
| <b>Total</b>        | <b>2,44,215/-</b>                                          | <b>3,24,215/-</b>                                      |
|                     |                                                            | <b>rounded off to</b>                                  |
|                     |                                                            | <b>3,24,200/-</b>                                      |

Accordingly, the claimant is entitled to a compensation of Rs.3,24,200/- (Rupees three lakhs twenty four thousand two hundred only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.2,44,215/- to Rs.3,24,200/-. No costs.



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(ii) The second respondent/insurance company is directed to deposit

the revised compensation of Rs.3,24,200/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS.

09.02.2023

Index : Yes/No  
Speaking Order/Non-Speaking Order  
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To

1.The Motor Accident Claims Tribunal,  
Chief Judicial Magistrate, Vellore.

2.The Section Officer,  
V.R Section,  
High Court, Madras.

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**A.A.NAKKIRAN, J.**  
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