



C.M.A.No.2006 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2006 of 2017

Mohammed Jallaludeen S/o. Ibrahim ... Appellant / Petitioner

vs.

1. M/s. Jayaram Hotels Pvt. Ltd.,
2. National Insurance Co., Ltd., ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.01.2016 made in M.A.C.T. O.P. No.152 of 2013 on the file of the Motor Accident Claims Tribunal / IV Court of Small Causes, Chennai for enhancement of compensation.

For Appellant : Mr.V. Velu

For Respondents : Mr.D. Bhaskaran [for R2]



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ORDER

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Not being satisfied by the judgment and decree passed in M.C.O.P. No.152 of 2013 dated 21.01.2016 on the file of Motor Accident Claims Tribunal / IV Court of Small Causes, Chennai, the claimant herein has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules, claiming a compensation of **Rs.10,00,000/-** for the injuries sustained by the appellant / claimant in a road traffic accident that occurred on 18.11.2012.

3. The Tribunal, after hearing the arguments of both sides and upon considering the oral and documentary evidence, has granted compensation of Rs.2,39,000/- with interest at 7.5% per annum from the date of numbering of the petition, i.e.07.01.2013 till the date of deposit fastening liability on the insurance company to pay compensation.

4. The learned counsel appearing for the appellant would strenuously contend that the appellant, who was 48 years old at the



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relevant point of time, was working as Car consultant, the notional income fixed by the Tribunal at Rs.6,500/-, is very less. The appellant suffered comminuted fracture of patella. Though, PW4, Dr. J.R.R. Thiagarajan has assessed the disability of the appellant as 45%, the Tribunal has fixed the disability at 20%, which is incorrect. The appellant has difficulties in walking, squatting etc.,. Considering the nature of fracture sustained by the appellant, only an amount of Rs.13,000/- was granted for loss of income during the treatment period, which is in the lower side. It is his further argument that the amount awarded for other heads are very less and prayed for enhancement.

5. Per contra, the learned counsel appearing for the Insurance Company would vehemently argue that for the disability assessed by PW4 Dr. J.R.R. Thiagarajan, is at 45%. The Tribunal has assessed at 20% and the overall compensation granted by the Tribunal, appears to be reasonable and hence the same may be confirmed.

6. Heard the arguments of learned counsel appearing on both sides and perused the entire materials on record.



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7. At, on the claimant's side, PW1 to PW4 have been examined and Ex.P.1 to Ex.P.22 were marked. Ex.P.2 to Ex.P.4 and Ex.P.15 are the discharge summaries.

8. On the respondents' side, neither any oral evidence was let in nor document was marked.

9. It is the evidence of P.W.1 that on 18.11.2012 at about 10.30 a.m., while he was travelling in his Alto Car bearing Registration No.TN07 AQ 9808 along ECR Road opposite to Thevaneri Ideal Beach, a Ford Figo Car bearing Registration No.PY-01-BL-7979, came in a high speed and in a rash and negligent manner dashed on his car and eventually he sustained grievous injuries, which is not in dispute.

10. It could be seen from the medical records that the appellant was admitted at Chettinad Hospitals, Chennai on 18.11.2012 and got discharged on 20.11.2012. Thereafter, he took treatment as in-patient at Soundara Pandian Bone and Joint Hospitals for 4 days. With regard to the medical bills, a Staff of Bone and Joint Hospital, was examined as PW3 (Ms. Geetha). A Doctor from the same hospital namely Dr. V. Thirumal, was examined as PW2 in order to mark the inpatient bill. It is the evidence



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of PW4, Dr. J.R.R. Thiagarajan, that the appellant was finding it difficult in walking, squatting and other physical activities and assessed his disability as 45%.

11. On account of the accident, it appears that the appellant suffered comminuted fracture of patella. PW4, Dr. J.R.R. Thiagarajan assessed the disability of the appellant as 45%. In a comminuted patella fracture, the bone gets shattered into three or more pieces. It is learnt that a comminuted patella fracture can be stable or unstable. When it is unstable, some of the bone pieces may be too small to reconnect and in that case, surgery is needed. The comminuted patella fracture will often leave the patient unable to walk and will be very painful.

12. According to the appellant / claimant, at the relevant point of time, he was 48 years old and he was a Car consultant and earning a sum of Rs.50,000/- per month. In order to prove the same, Car delivery notes, Ex.P.11 is marked.

13. The Hon'ble Supreme Court in ***Syed Sadiq and other vs. Divisional Manager, United India Insurance Co., Ltd., reported in 2014 (1) TN MAC Page 459 (SC)***, has fixed the monthly income of an insured, a



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vegetable vendor, who aged about 24 years old, as Rs.6,500/- per month for the accident that occurred in the year 2008. Hence, this Court deems fit to fix the income of the appellant at **Rs.12,000/- [Rupees Twelve Thousand only]** per month. As the appellant has undergone surgery for the comminuted fracture of patella, an amount of **Rs.48,000/- [Rupees Forty-eight Thousand only]** is granted towards loss of income during the treatment period for 4 months by fixing his monthly income as Rs.12,000/. An amount of **Rs.15,000/-** is granted for loss of amenities. Functional disability of the appellant is fixed as 35%. Taking into consideration the age of the appellant and the injuries sustained during the course of accident and also its impact on the avocation, an amount of **Rs.1,05,000/-** is awarded with regard to disability.

14. As regards the other heads viz., extra nourishment, transportation to hospital and attender charges, an amount of **Rs.10,000/- (Rupees Ten Thousand only) each**, is granted.

15. As regards the other heads, the amount awarded by the Tribunal appears to be reasonable and hence, the same need not be interfered with. Therefore, the compensation awarded by the Tribunal is reworked as tabulated below:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Disability	Rs.60,000/-	Rs.1,05,000/-	Enhanced
2	For Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
3	For Extra Nourishment	Rs.5,000/-	Rs.15,000/-	Enhanced
4	For Transport to Hospital	Rs.5,000/-	Rs.15,000/-	Enhanced
5	For Damages to Clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
6	For Attender Charges	Rs.4,750/-	Rs.15,000/-	Enhanced
7	For Medical Expenses	Rs.96,500/-	Rs.96,500/-	Confirmed
8	For Future Medial Expenses	Rs.5,000/-	Rs.5,000/-	Confirmed
9	For Loss of Income	Rs.6,500/-	Rs.48,000/-	Enhanced
10	For Loss of Amenities	Rs.5,000/-	Rs.5,000/-	Confirmed
	Total	Rs.2,38,750/-	Rs.3,55,500/-	Enhanced

16. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.2,39,000/- to Rs.3,55,500/-** which would carry interest at 7.5% per annum from the date of numbering of the petition, i.e. 07.01.2013 till the date of deposit.



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17. In the result,

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(i) The Civil Miscellaneous Appeal is **partly allowed**. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.2,39,000/- to Rs.3,55,500/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.3,55,500/-** (less the amount already deposited if any) together with interest at 7.5% per annum from the date of numbering of the petition, i.e.07.01.2013 till the date of deposit to the credit of M.C.O.P.No.152 of 2013 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes) 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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Index : Yes/No
Speaking / Non-speaking order
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R.KALAIMATHI, J.,

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To:

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

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