



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.213 of 2023

S.Manivannan

...Appellant

Vs.

1.R.Shiyamala

2.IFFCO TOKKIO General Insurance Company Ltd.

No.58A, Sri Anjanaya Tower, 2nd Floor,
Pavazha Nagar, Villupuram Main Road,
Reddiyarpalayam, Pondicherry – 605 005.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal award dated 30.06.2022 in M.C.O.P.No.43 of 2022, on the file of the Motor Accidents Claims Tribunal, (Additional Sub–Court),Vridhachalam.

For Appellant : Mr.S.Udhayakumar

For R2 : Mr.S.Arunkumar



J U D G M E N T

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The appellant is the claimant in M.C.O.P.No. 43 of 2022, on the file of the Motor Accidents Claims Tribunal, the Additional Sub Court, Vridhachalam. He has filed the above said claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.15,00,000/- for the injuries sustained by him in a road accident that took place on 23.12.2018.

2. The brief case of the appellant/claimant is as follows:-

(i) The appellant/claimant was aged 32 years on the date of the accident. He was working a loadman and earning a sum of Rs.26,000/- per month.

(ii) On 23.12.2018, the appellant/ claimant was riding a motor cycle towards Vannankudikadu from Karuveppilankurichi. While he reached opposite to J.J.Nagar diversion road, Near BSNL office, Karuveppilankurichi in Karuveppilankurichi-Andimadam main road, about 09.30 hours, the first respondent's car bearing Registration No.TN 07 AV 5080, driven rash and negligent manner and dashed against the claimant. Due to the said accident, the appellant/claimant sustained (i) Fracture both bones right leg (plate screw fixed) , (ii) Multiple injury over



right knee; (iii) Multiple head injuries; (iv) Injury over forehead; (v) Injury over right foot and (vi) injury over face and injuries all over the body.

(iii) Immediately after the accident, the appellant/claimant was taken to Government Hospital, Vridhachalam. The rash and negligent riding of the rider of the above said motorcycle was the sole reason for the above said accident. There was no negligence on the part of the appellant/claimant.

3. The owner of the car bearing Registration No. TN 07 AV 5080 was absent before the Tribunal, and therefore, he was set ex-parte. The IFFCO TOKIO General Insurance Company contested the claim petition. Before the Tribunal, on the side of the appellant/claimant, PW1 was examined and Exs. 1 to 13 were marked and Disability Certificate is marked as Ex. C1. On behalf of the respondents, no oral or documentary evidence are perused.

4. After going through the oral and documentary evidence adduced before the Court, the Tribunal awarded a sum of Rs. 3,05,800/- as compensation together with interest at the rate of 7.5% per annum and directed the first and second respondents to jointly and severally pay the said compensation to the appellant/claimant. Not satisfied with the



quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. After hearing both the parties and perusing the materials available on record, it is seen that the rash and negligence driving fixed on the part of the rider of the said car, is not in dispute and the same is hereby confirmed.

6. The learned counsel appearing for the appellant/claimant would contend that, in the above said accident, the appellant/claimant has suffered Fracture both bones right leg (plate screw fixed) , (ii) Multiple injury over right knee; (iii) Multiple head injuries; (iv) Injury over fore head; (v) Injury over right foot and (vi) injury over face and injuries all over the body. He would contend that the appellant/claimant was admitted as an in-patient in the Stanley Government Hospital, Chennai from 25.12.2018 to 23.01.2019. However, the Tribunal has awarded only a meagre amount as compensation to the appellant/claimant. Therefore, he would contend that the compensation awarded by the Tribunal should be enhanced.



7. The learned counsel appearing for the second respondent/Oriental Insurance Company Limited would contend that as per the investigation report of the investigator, the claimant Manivannan suddenly crossed the road without noticing the oncoming car and the claimant himself dashed against the car. Hence, the second respondent/Insurance Company states that the fault lies on the part of the claimant and there is no fault on the part of the driver who drove the car. Hence, the second respondent/Insurance Company is not liable to pay any compensation to the claimant.

8. Based upon the oral and documentary evidence, the Tribunal has rejected the contention of the Insurance Company that the claimant has cross the road in a negligent manner and thereby, he has contributed to the negligence.

9. After hearing both sides and taking note of the fact that the medical board has fixed disability at the rate of 27% and the tribunal has considered the disability of 27% and awarded a sum of Rs.5,000/- per 1% to the extent of Rs.1,35,000/- Taking into consideration the date of the accident, I find that it is just and reasonable and for the period of 5 months, a sum of Rs.45,000/-(9000*5) which is hereby enhanced to Rs.60,000/-(12000*5) towards "loss of income".



10. Since the appellant/claimant was admitted as an in-patient from 25.12.2018 to 23.01.2019 in Stanley Government Hospital, Chennai and since, he had also underwent a surgery, the sum of Rs.45,000/- and Rs.10,000/- granted by the Tribunal under the heads 'Future loss of income' and 'Transport expenses' is hereby enhanced to Rs.60,000/- and Rs.20,000/- respectively. A sum of Rs.7,500/- granted by the Tribunal under the head 'Nutrition and Extra Nourishment' is hereby enhanced to Rs.10,000/-. The compensation awarded towards other heads are just and proper and the same are hereby confirmed.

11. Accordingly, the award of the Tribunal in M.C.O.P.No. 43 of 2022 is modified as follows:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount granted by the Tribunal</i>	<i>Amount granted by this Court</i>
1.	Permanent disability	Rs. 1,35,000/-	Rs. 1,35,000/-
2.	Loss of amenities	Rs. 30,000/-	Rs. 30,000/-
3.	Future loss of income	Rs. 45,000/-	Rs. 60,000/-
4.	Pain and sufferings	Rs. 50,000/-	Rs. 50,000/-
5.	Medical expenses	Rs. 6,300/-	Rs. 6,300/-
6.	Future medical expenses	Rs. 10,000/-	Rs. 10,000/-
7.	Transport expenses	Rs. 10,000/-	Rs. 20,000/-
8.	Attender charges	Rs. 12,000/-	Rs. 12,000/-
9.	Nutrition & Extra Nourishment	Rs. 7,500/-	Rs. 10,000/-
	Total	Rs.3,05,800/-	Rs.3,33,300/-



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The compensation awarded by the Tribunal is enhanced from Rs.3,05,800/- to Rs.3,33,300/- which shall carry interest at the rate of 7.5% per annum.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed to the limited extent indicated above. No costs.

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,05,800/- to Rs.3,33,300/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of court fee.

(iv) The second respondent/Oriental Insurance Company Limited is directed to deposit the enhanced compensation amount awarded by this court, i.e., Rs.3,33,300/- (less the amount already deposited) 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. 43 of 2022, on the file of the Motor Accidents Claims Tribunal, Additional Subordinate Judge, Vridhachalam, within a period of eight weeks from the date of receipt of a copy of this order.



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(v) On such deposit being made by the second respondent, the appellant/claimant is permitted to withdraw the same, in the manner known to law.

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Index : Yes/No

Speaking/Non-speaking order

To

1.The Motor Accidents Claims Tribunal,
The Additional Subordinate Judge,
Vridhachalam

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



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RMT.TEEKA RAMAN, J.

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Judgment in
C.M.A.No.213 of 2023

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