



C.M.A.No.2918 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/8/2023

C O R A M

THE HONOURABLE Mr.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2918 of 2017

P. Mathialagan ... Appellant

Vs

1. P.R.R.Travels
280 N Block
Annanagar East
Chennai 600 102.

2. Bharathi Axa General Insurance Co. Ltd
Motor Third Party Claims
No.162 Metro Plaza, II Floor
Anna Salai
Chennai 600 002.

... Respondents

PRAYER : Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment of the decree dated 11/11/2016 passed in M.C.O.P.No.4070 of 2013 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For appellant
For respondents

...
...

Mr.K.Suryanarayanan
R.1 – served
Ms.K.Poomalai
for R.2.



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded by the Tribunal, in M.C.O.P.No.4070 of 2013, dated 11/11/2016, on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2. For convenience, the parties are referred as per their rank in the claim petitions.

3. The case of the claimant is as follows:-

On 14/10/2012, at about 22.30 hours, when the claimant was traveling in a bus, bearing Registration No.TN21-AJ-4191, on Walajabad to Tambaram road, driver of the bus, drove in a rash and negligent manner, on Manivakkam Bridge and lost his control and the bus was capsized, thereby, the claimant has sustained grievous injuries. A criminal case was registered against the driver of the bus, under Sections 279 and 337 of the Indian Penal Code, in Crime No.639 of 2012, on the file of D.4 Otteri Police Station. Since the driver of the bus is responsible for the accident, the claimant has filed a claim petition against the owner and insurer of the bus seeking



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compensation for a sum of Rs.10,00,000/-.

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4. Before the Tribunal, the first respondent remained ex parte. The Insurance Company disputed the allegation of negligent on the part of driver of the first respondent and disputed the disability, loss of income and prayed for dismissal of the claim petition.

5. Before the Tribunal, on the side of the claimant, P.Ws.1 and 2 have been examined and Exs.P.1 to P.14 were marked. On the side of the second respondent, R.Ws.1 and 2 have been examined and Exs.R.1 and R.2 were marked.

6. After elaborate discussions and reasons given, learned Tribunal had awarded Rs.6,04,600/- as compensation to the appellant, with an interest at the rate of 7.5% p.a. Aggrieved over the quantum of compensation fixed by the Tribunal, claimant has filed the appeal for enhancement of compensation.

7. Heard Mr.K.Suryanarayanan, learned counsel for the appellant and Ms.K.Poomalai, learned counsel for the second respondent.



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8. The learned counsel appearing for the appellant submitted that the accident has occurred only due to the negligent driving of the bus driver belongs to the first respondent and hence first and second respondents are liable to pay compensation. He would further submit that even though P.W.2/Doctor has assessed the disability of the claimant as 75% partial and permanent, Tribunal has fixed the disability at 25%.

9. Learned counsel for the Insurance Company submitted that the Tribunal has considered the injuries sustained as well as other various claims made by the claimant and properly assessed the compensation and passed an award and there is no valid reason to interfere with the award.

10. I have considered the submissions of both sides and perused the records.

11. The Insurance Company has not chosen to file appeal challenging the liability fixed on the respondents regarding payment of compensation. The grievance of the appellant is that the compensation awarded on the lower side and the assessment of disability by the Tribunal is also to be revised.



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12. P.W.2 Doctor who has assessed the disability gave his evidence that on examination of the claimant, he has noted the following injuries

- (i). Traumatic Paraparesis fracture of D.12 Vertebra
- (ii). D.11 and L1 disc Prolapsed
- (iii). Fracture shaft of left femur
- (iv). Fracture of both bones of left leg and admitted in Government

General Hospital, Chennai, on 14/10/2012 and underwent three surgeries

- (a). Internal fixation in Vertebra (two implants)
- (b). Internal fixation in left femur and
- (c) internal fixation in left Tibia and discharged on 24/1/2013 and referred to K.K.Nagar Rehabilitation Center.

13. Subsequently, after due treatment, the physical conditions noted are as follows:-

“Implant present in left tibia with bone fragments, the fracture of tibia and fibula got malunited with deformity of fibula bone. The left leg got shortened by one inch and now the claimant has difficulty in walking,



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limping present, needs support while walking, cannot put weight over left leg, difficult to lift left leg, stiffness of left leg and cannot bend the left knee, weakness and numbness of lower limbs, mobility restricted, marital life affected, active use of left leg not possible, cannot work, difficult to use public transport and at present, he has total disability of 75% which is partial and permanent.”

14. The disability certificate along with the evidence of P.W.2 shows that the injured has sustained 75% of the permanent physical disability. He was a supervisor by profession, aged about 40 years. Injuries sustained by him has been incapacitated from doing any manual work.

15. The Tribunal after considering the avocation and also based on the evidence produced, has held that the loss of future earning capacity is 25%. It has been sought to be enhanced by the claimant on the ground that it is not only a case of incapacitation to do manual work and also the injuries sustained by him have stopped the claimant from doing any work in a standing position and he could not also walk for less distances without support of others.



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16. The injuries sustained and subsequent complications placed on record shows that, the claimant has sustained fracture on his Vertebra, fracture of femur and both bone fracture of left leg. These injuries restricted the mobility of the claimant. He cannot do any manual work and could not actively use his left leg. The combined effect of injuries as stated by P.W.2 would have great impact on his physical activity. However, considering the nature of avocation, he requires less manual labour.

17. In view of the above, fixing the loss of earning capacity to the extent of 35% would be reasonable and accordingly, loss of earning capacity of the claimant is fixed at 35%. The Tribunal has notionally fixed the income of the claimant at Rs.7,500/- and adding future prospectus at the rate of 25%, it comes to Rs.1,875/-. So the total income of the injured is quantified at Rs.9,375/- and the earning capacity shall stand modified as follows:-

$\text{Rs.9,375/-} \times 12 \times 35\% \times 15 = \text{Rs.5,90,625/-}$.

18. Apart from granting compensation under the head - loss of earning capacity, the Tribunal has also awarded compensation under the heads - attender charges, transport to hospital, extra nourishment, damage to



clothing, medical bills, damages for mental and physical shock and pecuniary loss. On a perusal of the same, this Court feels that amount that has been awarded under the above heads are reasonable. Hence no modification is required on the above heads.

19. Considering the fact that the claimant has undergone treatment at Government Hospital and surgeries made and implications fixed, granting of compensation for Pain and Suffering is required to be enhanced from Rs.50,000/- to Rs.75,000/-. Accordingly, total compensation payable to the claimant is enhanced to Rs.11,32,450/-.

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income/loss of earning capacity	Rs.78,750/-	Rs.5,90,625/-	Enhanced
2.	Attender Charges	Rs.48,750/-	Rs.48,750/-	Confirmed
3.	Transport to Hospital	Rs.20,000/-	Rs.20,000/-	Confirmed
4.	Extra Nourishment	Rs.40,000/-	Rs.40,000/-	Confirmed
5.	Damages to clothing	Rs.1,000/-	Rs.1,000/-	Confirmed
6.	Medical bills	Rs.18,575/-	Rs.18,575/-	Confirmed
7.	Pain and Sufferings	Rs.50,000/-	Rs.75,000/-	Enhanced
8.	Damages for Mental and Physical shock	Rs.10,000/-	Rs.10,000/-	Confirmed
9.	Pecuniary Loss	Rs.3,37,500/-	Rs.3,37,500/-	Confirmed



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Total	Rs.6,04,575/-	Rs.11,32,450/-	Enhanced by Rs.5,27,875/-
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20. The learned counsel appearing for the second respondent submitted that the second respondent Insurance Company has merged with ICICI LOMBARD General Insurance Company Ltd and he has filed a memo to that effect, and the same is recorded and the Memo shall form part of the records.

21. In the light of consensus arrived, appellant/injured is entitled to an enhanced compensation of Rs.11,32,450/- at the rate of 7.5% per annum, from the date of claim petition till the date of deposit.

22. In view of the above, we direct ICICI LOMBARD General Insurance Company Ltd., Nos.84 & 85, I Floor, Hariant Plaza, Waltax Road, Chennai 600 003, to deposit the enhanced amount of Rs.11,32,450/- along with interest at the rate of 7.5% per annum, from the date of claim till the date of deposit and costs, less the statutory deposit, to the credit of MCOP No.4070 of 2013 on the file of Motor Accidents Claims Tribunal (III Small Causes Court), Chennai, within a period of four weeks from the date of



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receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same, by making necessary applications before the tribunal.

23. The Civil Miscellaneous Appeal is allowed as indicated above. No costs.

28/8/2023

mvs.

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The III Small Causes Judge,
Motor Accident Claims Tribunal,
Chennai.



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

K.RAJASEKAR,J

mvs.



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