



CMA.No.597 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.01.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.597 of 2017

Selvakumar

... Appellant

Vs.

1. Jagadeesan
2. New India Assurance Company Ltd.,
Woods Road Branch, B.R.Complex,
No.28/29, Woods Road,
Chennai – 600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 06.03.2015 made in M.A.C.T.O.P.No.45 of 2011 on the file of the Motor Accidents Claims Tribunal (IV Additional District Judge, Thiruvallur, Ponneri)

For Appellant : Ms. A.Subadra
for Ms.M.Malar

For Respondents : Exparte for R1
No appearance for R2

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 06.03.2015 in M.A.C.T.O.P.No.45



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of 2011 passed by the Motor Accidents Claims Tribunal, (IV Additional District Judge, Thiruvallur, Ponneri).

2. The case of the claimant/appellant is that on 18.11.2010 at 10.30 p.m., while the appellant was riding a bike bearing Regn.No.TN-20-AW-4285 near Rajiv Gandhi Salai in Mettukuppam, in the same direction, a Eicher van bearing Regn.No.TN-01-Y-4943 came from behind in a rash and negligent manner and hit him due to which the appellant fell down and sustained grievous injuries all over the body. Claiming that the appellant was an Assistant manager in a private Company and earning about Rs.10,000/- per month and the rider of the van is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.20,05,000/-.

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



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4. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,92,827/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Transport to Hospital	10,000/-
Extra Nourishment	20,000/-
Pain and sufferings	1,00,000/-
Permanent Disability 85%	1,70,000/-
Medical Expenditure	5,33,800/-
Loss of Income	1,00,000/-
Total	9,33,800/-

5. The Appellant/claimant has met with an accident on 18.11.2010 and sustained injuries over head, right shoulder, right hip, over spine, as a result of which, accident caused by the vehicle owned by the first respondent. He preferred a claim before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained by him. The Motor Accident Claims Tribunal had directed the second respondent to pay the aforesaid compensation to the Appellant/claimant.



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6. Before the Tribunal, on the side of the claimant, three witnesses were examined as PW1 to PW3 and 27 exhibits were marked as Ex.P1 to Ex.P27. On the side of the respondents, one witnesses was examined as RW1 and 4 exhibits were marked as Ex.R1 to Ex.R4.

7. Heard the learned counsel for the appellant. The first respondent remains exparte before the Tribunal and there is no representation for the second respondent.

8. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is inadequate and not in commensuration with the gravity of the injuries suffered by the claimant. It is contended that the claimant suffered grievous injuries and the PW2/Doctor assessed the disability at 85%. The claimant was an Assistant Manager in a private company and aged about 28 years at the time of accident and after the accident, he was not in a position to perform his work as he was doing before.



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9. The learned counsel for the second respondent denies the averments with regard to the age, occupation and monthly income of the appellant and put the appellant to strict proof of the same. He further submitted that the driver of the van did not possess valid and effective driving license on the date of the accident. He further submitted that the total compensation claimed by the appellant under various heads is highly excessive and baseless and only to boost up the claim. Hence, he prays for dismissal of the appeal.

10. The accident occurred on 18.11.2010 at 10.30 p.m., near Rajiv Gandhi Salai, Chennai. Due to the accident, the claimant sustained grievous injuries. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. As far as the negligence is concerned, the driver of the Van bearing Regn.No.TN-01-Y-4943 had driven the vehicle in a rash and negligent manner and caused the accident.

11. With regard to the quantum of compensation, the Tribunal has awarded



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a total compensation of Rs.9,33,800/-. Due to the said accident, he sustained

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grievous injuries. Further, the compensation awarded by the Tribunal under the head 'permanent disability' at Rs.1,70,000/- appears to be low. It is also contended that no amount has been awarded by the Tribunal with regard to the Attender Charges. Therefore, the compensation granted by the Tribunal especially with regard to 'permanent disability' is to be enhanced.

12. The learned counsel for the appellant has relied upon the Judgment rendered by this Court in **CMA.No.4645 of 2019 dated 10.01.2020, CDJ 2020 MHC 1013, M.Chinnathambi Vs. S. Deepa & Another**. The relevant portion of paragraph No.8 of the abovesaid judgment reads as follows:

“8..... The amount awarded on percentage basis was periodically enhanced. This Court by the judgment reported in “2013 (2) TNMAC 583 “ in the matter of “National Insurance Co. Ltd, Vs. G.Ramesh”, granted Rs.3000/- per percentage for accident occurred in the year 2009, enhancing from Rs.2000/- per percentage taking into account the cost of living at that time. Due to passage of time, a sum of Rs.3000/- per percentage of disability awarded in the year 2013 for the accident of the year 2009 is to



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be enhanced. Taking into consideration the raise in cost of living, it will be reasonable to award a sum of Rs.4000/- per percentage for the accident of the year 2014 and 2015 and Rs.5000/- per percentage for the accident from the year 2016 onwards towards disability certified by the qualified Doctor or Medical Board. “

13. This Court is of the considered opinion that the appellant/claimant was aged about 28 years at the time of the accident. The doctor assessed the disability at 95%. However, the Tribunal has reduced the same and has assessed the disability at 85% after considering the multiple injuries sustained by the appellant. Due to the accident, he was unable to perform his routine duties in a normal manner. He had taken treatment at Global Hospital, as in-patient from 18.11.2010 to 13.12.2010 as seen from the Ex.P.24/Disability certificate. Undoubtedly, the injuries would have caused the disability and he would be incapacitated to some extent from performing his normal duties. This apart, the accident occurred in the year 2010. Thus, fixing a sum of Rs.2000/- in respect of 'permanent disability' is inadequate. Therefore, this Court is inclined to enhance the compensation under the head of 'permanent disability' by taking into consideration a sum of Rs.3000/- for each percentage and hence, it amounts to a



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sum of Rs.2,55,000/- (85% x 3000). A perusal of Ex.P.24/Disability certificate would reveal that the appellant was admitted as in-patient from 18.11.2010 to 13.12.2010. It would be appropriate to award a sum of Rs.10,000/- under the head, 'Attender charges'. Accordingly, Rs.10,000/- is awarded towards 'Attender Charges'.

14. 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.

15. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.9,33,800/- to Rs.10,18,800/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Transport to Hospital	10,000/-	10,000/-
Extra Nourishment	20,000/-	20,000/-
Pain and Sufferings	1,00,000/-	1,00,000/-
Permanent Disability	1,70,000/-	2,55,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Medical Expenditure	5,33,800/-	5,33,800/-
Loss of income	1,00,000/-	1,00,000/-
Attender Charges	---	10,000/-
Total	9,33,800/-	10,28,800/-

16. Conclusion:

In the result, this appeal is allowed. However, the rate of interest fixed by the Tribunal at the rate of 7.5% is confirmed. The second respondent is directed to deposit the enhanced amount i.e, Rs.10,28,800/- along with interest, after deducting the amount already deposited, if any, to the credit of M.A.C.T.O.P.No.45 of 2011 within a period of six weeks from the date of receipt of a copy of this Judgment and thereafter, recover the same from the owner of the vehicle, in accordance with law. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment. On such deposit being made, the Tribunal is directed to



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transfer the award amount along with accrued interest as per the order of this

Court to the Appellant/claimant through RTGS within a period of two weeks

thereafter. No costs.

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Index : Yes/No
Internet: Yes/No
gv

To

1. The Motor Accidents Claims Tribunal
(IV Additional District Judge, Thiruvallur, Ponneri)
- 2.The Section Officer,
V.R.Section,
High Court, Madras.



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A.A.NAKKIRAN, J.

gv

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