



C.M.A.No.4429 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON:22.06.2023

PRONOUNCED ON:30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.4429 of 2019

Anandakumar

... Appellant

Vs.

1.Ramalingam

2.The Magma HDI General Insurance Co.,Ltd.,
2nd Floor, 4/454, Ram Complex,
Near New Bus Stand, ARRS Multiplex Road,
Salem District-636 009.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of Motor Vehciles Act to set aside the decree and judgement dated 30.08.2019 made in MCOP.No.1056 of 2017, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.-II, Salem.

For Appellant : Mr.C.Paraneedharan

For R1 : Dispense with

For R2 : Mr.N.Somasundar



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JUDGMENT

This Civil Miscellaneous Appeal is filed by claimant seeking enhancement of compensation awarded in MCOP.No.1056 of 2017, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.- II, Salem.

2. The parties are referred to hereunder according to the status and ranking before the Tribunal.

3. On 26.01.2017 at about 07.30 a.m the claimant was riding a two wheeler bearing Reg.No.TN 33 BK 2759 on Pallipalayam to Thiruchengode Main Road, while he reached near Sathiya Nagar water tank, a two wheeler bearing Reg.No.TN 38 CA 3883 belongs to the first respondent came in the opposite direction in high speed in a rash and negligent manner and dashed on the two wheeler of the claimant herein. Due to the negligent driving of the first respondent driver, the claimant herein has sustained permanent disability and he was not able to do his earlier avocation, hence prayed for compensation of Rs.15,00,000/- from the respondents under Section 166 of



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Motor Vehicles Act.

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4. The first respondent has not contested the claim and remained exparte.

5. The second respondent insurance company has filed counter and submitted that the driver of the first respondent is not responsible for the accident and claimant has driven the vehicle in rash and negligent manner and contributed to the accident. The driver of the first respondent has not having a valid driving license and compensation claimed under various heads is also on higher side and prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimants PW1 was examined and Exs.P1 to P11 were marked . On the side of the respondents, RW1 and RW2 were examined and Exs.R1 and R2 were marked. The disability certificate issued to the claimant by the Medical Board was marked as Ex.C1.

7. Based on the evidence placed on record, the Tribunal in Point No.1 has held that the driver of the first respondent's vehicle is responsible for the



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accident. In Point No.2, the Tribunal has considered the issue of non possession of the valid driving license by the driver of the first respondent and has held that the driver of the first respondent was not having a valid driving license, the second respondent is liable to pay the compensation and the same shall be recovered from the first respondent. In Point No.3, the Tribunal has quantified the compensation and awarded Rs.3,18,349/- as compensation.

8. Aggrieved over the award of compensation, this Appeal has been filed by the claimant, for enhancement of compensation. No Appeal filed by the respondents.

9. Learned counsel for the claimant submits that the Tribunal has not properly assessed the loss of earning capacity based upon the disability certificate issued by the Medical Board and method adopted for calculating the compensation amount for disability sustained by the claimant is not proper and the proper method to be adopted in multiplier. The compensation awarded under other heads is not proper. It is further submitted that the notional income fixed by the Tribunal is on the lower side and prays to



enhance the same.

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10. Learned counsel for the insurance company has submitted that the based on the evidence placed on record, the Tribunal has rightly granted compensation which is just and fair and there is no need for modification and the claimant has failed to prove the avocation before the Tribunal, hence prays to confirm the award passed by the Tribunal.

11. I have considered the submissions made by both sides and also perused the records.

12. The claimant was examined himself as PW1 and stated that he was working as a weaver and earning Rs.30,000/- per month. But except this oral evidence, he has not produced any documents to substantiate his avocation. He has marked his Ex.P9 PAN card and Ex.P10 bank and pass book, and both the documents have not reflected the actual monthly income earned by him. There is no proper documents produced to prove his income earned through his avocation. Hence fixing compensation based on notional income by the Tribunal is proper. The accident happened in the year 2017,



fixing of notional income as Rs.7,500/- in on the lower side and I am of the view that the same requires modification and accordingly Rs.12,000/- per month is fixed as notional income. Medical Board has assessed the disability of the claimant and disability is fixed as 30% and the disability certificate was marked as Ex.C1. The claimant sustained following injuries.

1. Compound comminuted fracture dislocation of talus
2. Fracture navicular bone medial cuneiform and comminuted fracture PPX of big toe of right leg.

However, the injuries noted did not reduced the earning capacity of the claimant but it reduced his regular physical activities. Considering the same and also the fact that the accident was happened in the year 2017 and as per the judgment of this Court in ***M.Chinnathambi vs. S.Deepa***, reported in 2020 (1) TNMAC 617, grant of Rs.5,000/- per percentage of injury would be proper and accordingly the compensation for the permanent disability is awarded as Rs.1,50,000/- (Rs.5000 x 30%). The discharge summary, shows that claimant was admitted in the hospital on 26.01.2017 and discharged on 15.02.2017 which shows that he was under treatment for nearly 21 days, however Tribunal has awarded 6 month loss of income during treatment period and same is on higher side and the same is modified to two months



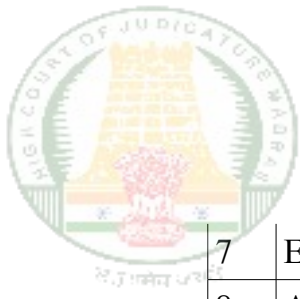
and accordingly, the same is modified as Rs.24,000/-(2 x Rs.12,000/-). The

Tribunal has awarded Rs.30,000/- under the head Pain and Suffering.

Considering the nature of injuries, this Court is of the opinion that the compensation awarded under head Pain and Suffering requires modification and accordingly enhanced to Rs.50,000/- and as far as other heads are concerned, the Tribunal has awarded just and fair compensation and the same is hereby confirmed.

13. In the light of the above discussion, the award of the Claims Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1	Permanent Disability	90,000/-	1,50,000/-	Enhanced
2	Pain and suffering	30,000/-	50,000/-	Enhanced
3	Loss of Amenities	30,000/-	30,000/-	Confirmed
4	Medical Expenses	81,849/-	81,849/-	Confirmed
5	Loss of Income during the Treatment	45,000/-	24,000/-	Reduced
6	Transportation charges	10,000/-	10,000/-	Confirmed



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7	Extra Nourishment	20,000/-	20,000/-	Confirmed
8	Attender Charges	10,500/-	10,500/-	Confirmed
9	Damages to clothes	1,000/-	1,000/-	Confirmed
	Total	Rs.3,18,349/-	Rs.3,77,349/-	Enhanced by Rs.59,000-

14. In the result:

(i) The Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is modified to Rs.3,77,349/-.

(ii) The second respondent directed to deposit the above said compensation amount together with interest at the rate of 7.5% from the date of petition to the date of realization within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited and shall be recovered from the first respondent. On such deposit, the climant is entilted to withdraw the same by making appropriate application.

(iii) The apportionment of the Tribunal is confimed.

(iii) There shall be no order as to costs.

30.08.2023

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Index:Yes/No



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Speaking Order: Yes/No
Neutral Citation Case: Yes/No

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To:

1. The Special Subordinate Judge No.-II,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR,J.

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