



C.M.A.Nos.84 & 88 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 21.02.2023	Pronounced on 21.04.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.84 & 88 of 2023

Govindasamy ... Appellant in C.M.A.No.84 of 2023

Muneeshwaran ... Appellant in C.M.A.No.88 of 2023

Vs.

1.Ramamurthy

2.Divisional Manager,
ICICI Lombard General Insurance Company Ltd.,
No.142, ECR Main Road, 1st Floor,
Kottupalayam,
Pondicherry – 605 008. ... Respondents in both the appeals

Common prayer: Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.07.2019 made in M.C.O.P.No.327 & 325 of 2018 on the file of the Special Motor Accident Claims Tribunal / the Special Sub Court, Tiruvannamalai.



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(In both the appeals)

For Appellant : Mr.S.Panneer Selvam

For Respondents

For R1 : No appearance

For R2 : Mr.B.Siva Kollapan

COMMON JUDGMENT

These civil miscellaneous appeals have been filed against the Judgment and Decree dated 26.07.2019 passed in M.C.O.P.Nos.327 & 325 of 2018 respectively on the file of the Special Motor Accident Claim Tribunal / the Special Sub-Court, Tiruvannamalai.

2. The petitioners Govindasamy and Muneeshwaran, who were working as driver and cleaner respectively in TATA ACE van are the claim petitioners in M.C.O.P.Nos.327 & 325 of 2018 and they have filed these appeals for enhancement of compensation.



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3. For the sake of convenience, the parties are referred to as per their litigating status before the Tribunal.

4. The factum of the accident, manner of the accident and rash and negligence on the part of the driver of the 1st respondent vehicle are not in dispute. Accordingly, the findings rendered by the Tribunal in this regard are hereby confirmed.

5. On the point of quantum of compensation, both the parties have been heard.

6. Before the Tribunal, on filing a joint memo, joint trial was conducted and common evidence was taken. The injured Govindasamy and Muneeshwaran were examined as PW1 and PW2 and Exs.P1 to P17 were marked. On behalf of the Insurance Company, on witness summon, assistant from RTO was examined as RW1 and Exs.R1 was marked and staff of the Insurance Company was examined as RW2 and Exs.R2 to R4 were marked and



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the Medical Certificate issued by the District Medical Board for the claim petitioners were marked as Exs.C1 and C2.

7. Based on the oral and documentary evidence adduced before the Trial Court, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the 1st respondent's Maruti Suzuki Swift Desire car. Based on the Ex.R1 and R4, the Trial Court held that on the date of the accident, the vehicle was insured with the 2nd respondent / Insurance Company. Based on Ex.R1, the Trial Court has held that the driver of the Maruti Suzuki Desire car / the offending vehicle does not possess a valid license on the date of the accident. Accordingly, following the judicial pronouncement of the Hon'ble Supreme Court, the Tribunal has held that the Insurance Company has to pay the compensation and thereafter to recover the same from the owner of the vehicle. In the absence of any challenge to the said finding, the said finding of the Trial Court is hereby confirmed.

8. Govindasamy, the claim petitioner in M.C.O.P.No.327 of 2018 (C.M.A.No.84 of 2023) examined himself as PW2 and Ex.C1 was marked. As



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per Ex.C1, he sustained “Fracture left shaft of femur with internal fixator” injuries. Hence, the Tribunal has rightly fixed the disability at 40%. Though he claimed that he was a driver, driving license of PW2 was not marked before the Trial Court. Based on the document Exs.P1, P11 and P12 the Tribunal has fixed the age of the injured at 30 and Rs.3000/- has been fixed per percentage for 40% disability i.e., $(3000 \times 40\% = 1,20,000/-)$. Since the accident has taken place in the year 2018, I am inclined to enhance Rs.5000/- per percentage $(5000 \times 40\% = 2,00,000/-)$.

9. On perusal of Ex.P11, P12 and P15 and also taking note of the injuries as reflected in the discharge summary, the Tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings and the same has been hereby confirmed. Based upon Ex.P13, the Tribunal has awarded a sum of Rs.46,397/- towards medical expenses and the same has also been confirmed. The Tribunal has awarded a sum of Rs.25,000/- for loss of amenities, for nutrition and extra nourishment Rs.50,000/- has been awarded, for attender charges Rs.20,000/- has been awarded, for transportation Rs.15,000/- has been awarded and for loss of earning capacity for six months at the time of accident $15000 \times 6 = 90,000/-$.



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Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.3,58,397/- to Rs.4,96,397/-.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Permanent Disability	200000
2	Pain and sufferings	50000
3	Transportation	15000
4	Loss of income	90000
5	Loss of amenities	25000
6	Nutrition and extra nourishment	50000
7	Medical expenses	46397
8	Attender Charges	20000
	Total	496397

10. The Appeal was filed with the delay of 2 days and while allowing the condone delay petition in C.M.P.No.13610 of 2020, this Court had held that the claim Petitioner will not be entitled to interest for the default period.

11. The Tribunal has also awarded 'pay and recover'. After hearing learned counsel for the appellant and after perusing the records, I find that the 'pay and recover' imposed by the Tribunal is just and fair and the same does not warrant any interference of this Court. Accordingly, 'pay and recover' ordered



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by the Tribunal is hereby confirmed.

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12. Muneeshwaran, the claim petitioner in M.C.O.P.No.325 of 2018 (C.M.A.No.88 of 2023) claims to be working as a cleaner in the vehicle involved in the accident. As per the Ex.C1 / Disability Certificate, he sustained “Fracture right shaft of femur with internal fixator, fracture right leg second material and fracture left upper limb second metacarpal” and accordingly, the disability is fixed at 50% and Rs.3000 has been fixed per percentage for 50% disability. Since the accident has taken place in the year 2018, I am inclined to enhance Rs.5000/- per percentage ($5000 \times 50\% = 2,50,000/-$). Taking note of the injury sustained, as reflected in Ex.P2, P5 and P6, the Tribunal has awarded a sum of Rs.60,000/- towards pain and sufferings and the same is hereby confirmed. As per Ex.P7 / Medical Bills issued by Pondicherry Institute of Medical Science, the Tribunal has awarded a sum of Rs.83,043/- for medical expenses and the same is also confirmed, for transportation Rs.15,000/- is awarded, for loss of earning for the period of six months at the rate of Rs.9,000/- per month is arrived at ($Rs.9,000/- \times 6 = Rs.54,000/-$), for loss of amenities Rs.30,000/- is awarded, for nutrition and extra nourishment



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Rs.50,000/- is awarded, for attender charges Rs.20,000/- is awarded.

Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.4,32,043/- to Rs.5,62,043/-.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Permanent Disability	250000
2	Pain and sufferings	60000
3	Transportation	15000
4	Loss of income	54000
5	Loss of amenities	30000
6	Nutrition and extra nourishment	50000
7	Medical expenses	83043
8	Attender Charges	20000
	Total	5,62,043

13. The Appeal was filed with the delay of 2 days and while allowing the condone delay petition in C.M.P.No.13609 of 2020, this Court had held that the claim Petitioner will not be entitled to interest for the default period.

14. The Tribunal has also awarded 'pay and recover'. After hearing learned counsel for the Petitioner and after perusing the records, I find that the 'pay and recover' imposed by the Tribunal is just and fair and the same does not warrant any interference of this Court. Accordingly, 'pay and recover' ordered by the Tribunal is hereby confirmed.



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CMA.No.84 of 2023;

15.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.3,58,397/- to Rs.4,96,397/- to the extent indicated above, with 7.5% interest per annum (excluding the default period of 2 days). No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance company is permitted to recover the award amount, which was already deposited, from the owner of the vehicle.

(v) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the



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enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

CMA.No.88 of 2023;

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.4,32,043/- to Rs.5,62,043/- to the extent indicated above, with 7.5% interest per annum (excluding the default period of 2 days). No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the Insurance company is permitted to recover the award amount, which



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was already deposited, from the owner of the vehicle.

(v) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

21 .04.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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To

The Presiding Officer,
Special Motor Accident Claims Tribunal /
Special Sub Court,
Tiruvannamalai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 21.04.2023