



C.M.A.No.2518 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2518 of 2019

Minor.K.Ashwini
Minor rep. by N.F.Father
G.Kumaran

... Appellant

Vs.

1.M/s.Ashok Leyland Ltd.

2.The Branch Manager,
United India Insurance Company Ltd.,
Dare House Extension,
3rd Floor, 17, Balaji Salai,
Chennai – 1.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award and decree dated 10.09.2008 made in M.C.O.P.No.131 of 2005 on the file of the Motor Vehicle Claims Tribunal / Additional District Judge, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyan
For Respondents : R1 – Not Ready Notice
Ms.I.Malar for R2

J U D G M E N T

This appeal has been filed against the award and decree dated



C.M.A.No.2518 of 2019

10.09.2008 passed by the Motor Vehicle Claims Tribunal / Additional District Judge, Krishnagiri, in M.C.O.P.No.131 of 2005.

2.The brief facts of the case is that on 24.01.2004, at about 7.30p.m., the appellant was standing on the left side of the road near the Bridge in Bagalur to Malur Road. At that time, an Ashok Leyland Chassis bearing Registration No.TN.29 J/1234 (T) belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the appellant and two others and thereafter dashed against a Tempo bearing Registration No.KA.34/1933, due to which, the appellant sustained injuries.

3.Thereafter, the injured claimant/ appellant filed claim petition before the Tribunal, claiming compensation of Rs.5 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.1,30,572/- with interest at the rate of 7.5% p.a. from the date of filing till 13.04.2006, again from 24.04.2008 till the date of realisation and proportionate costs and directed that the respondents 1 and 2 are jointly and severally liable to pay the compensation. Aggrieved by the same, the appellant claimant has filed this appeal for enhancement in compensation.



C.M.A.No.2518 of 2019

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4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the quantum of compensation awarded by the Tribunal. The learned counsel further submitted that the vehicle owned by the first respondent and insured with the second respondent was involved in the accident. Inorder to prove the negligence as well as the injuries sustained, the appellant examined P.W.1 – eye witness who was present at the scene of occurrence and P.W.2 – Doctor. Though the appellant filed claim petition under Section 166 of the Motor Vehicles Act, the Tribunal awarded compensation under Section 163 – A of the Motor Vehicles Act, which is not sustainable one.

5.The learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal instead of awarding compensation under Section 166 of the Motor Vehicles Act erred in awarding compensation under Section 163 – A of the Motor Vehicles Act. Hence, this Court may re-assess the compensation awarded by the Tribunal.

6.Heard the learned counsel appearing for the appellant claimant



C.M.A.No.2518 of 2019

WEB COPY

as well as the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

7. Admittedly, on 24.01.2004, at about 7.30 p.m., the appellant was standing on the left side of the road near the Bridge in Bagalur to Malur Road. At that time, the vehicle belonging to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the appellant and two others and thereafter dashed against a Tempo, due to which, the appellant sustained injuries.

8. The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.67,500/- for loss of earning capacity, Rs.35,572/- for medical expenses, Rs.3,500/- for transport expenses, Rs.2,000/- for extra nourishment, Rs.2,000/- for loss of attenders, Rs.20,000/- for pain and sufferings and arrived at a total compensation of Rs.1,30,572/- with interest at the rate of 7.5% p.a. from the date of filing till 13.04.2006, again from 24.04.2008 till the date of realisation.



C.M.A.No.2518 of 2019

9.The accident and the manner in which the accident happened are not disputed. The negligence aspect is also not in dispute. The only dispute is that the Tribunal instead of awarding compensation under Section 166 of the Motor Vehicles Act, awarded compensation under Section 163 – A of the Motor Vehicles Act.

10.Admittedly, the appellant filed claim petition under Section 166 of the Motor Vehicles Act, whereas, the Tribunal converted the same into under Section 163 – A of the Motor Vehicles Act. As per Section 163 – A of the Motor Vehicles Act, the claimant is entitled to give up the negligence aspect and if the claimant given up the negligence aspect, the claimant is entitled to fix the claim as per Schedule II of the Motor Vehicles Act. In the present case, the Tribunal arrived at a conclusion in respect of the negligence aspect and the conclusion is not as per Schedule II of the Motor Vehicles Act and the Tribunal inadvertently converted the claim petition from Section 166 of the Motor Vehicles Act to Section 163 – A of the Motor Vehicles Act which is not sustainable one. The Tribunal ought to have awarded compensation under Section 166 of the Motor Vehicles Act.

11.The Doctor has assessed the disability of the injured claimant



C.M.A.No.2518 of 2019

as 35% permanent disability. If a sum of Rs.2,000/- is awarded per percent of disability, the amount awarded under the head loss of earning capacity works out to Rs.70,000/- [35% X Rs.2,000/- = Rs.70,000/-]. The amount awarded for medical expenses is confirmed. The amount awarded under the other heads, in the opinion of this Court are low and this Court is inclined to enhance the amount awarded under the other heads. Accordingly, the amount awarded for pain and sufferings is enhanced to Rs.25,000/- from Rs.20,000/-, the amount awarded for transport expenses is enhanced to Rs.5,000/- from Rs.3,500/-, the amount awarded for extra nourishment is enhanced to Rs.2,500/- from Rs.2,000/-, the amount awarded for loss of attenders is enhanced to Rs.2,500/- from Rs.2,000/-.

12. Accordingly, the compensation amount is re-assessed as follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of earning capacity	Rs. 67,500/-	Rs. 70,000/-
2.	Extra nourishment	Rs. 2,000/-	Rs. 2,500/-
3.	Transport expenses	Rs. 3,500/-	Rs. 5,000/-
4.	Medical expenses	Rs. 35,572/-	Rs. 35,572/-
5.	For pain and sufferings	Rs. 20,000/-	Rs. 25,000/-
6.	Loss of attenders	Rs. 2,000/-	Rs. 2,500/-
	Total	Rs.1,30,572/-	Rs.1,40,572/-



C.M.A.No.2518 of 2019

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13.The appellant claimant is entitled to total compensation of Rs.1,40,572/- along with interest at the rate of 7.5% p.a. from the date of filing till 13.04.2006, again from 24.04.2008 till the date of realisation.

14.The civil miscellaneous appeal is allowed on the above terms. The award and decree dated 10.09.2008 passed by the Motor Vehicle Claims Tribunal / Additional District Judge, Krishnagiri, in M.C.O.P.No.131 of 2005, is modified to the above extent.

15.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the appellant/ claimant is permitted to withdraw the modified/ enhanced award amount, along with accrued interest and proportionate costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal and on production of necessary proof with regard to her majority. If the appellant is still minor, the modified/ enhanced award amount shall



C.M.A.No.2518 of 2019

be kept in an interest yielding fixed deposit with anyone of the Nationalized Bank, initially, for a period of three years to be renewed at periodic intervals until she attain majority and the interest derived from out of the said share of the minor shall be paid to her Father Mr.G.Kumaran every quarter to be utilized for the welfare of the said minor. The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required.

16.The civil miscellaneous appeal is allowed. No costs.

09.11.2023

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

1.The Motor Vehicle Claims Tribunal /
Additional District Judge,
Krishnagiri.



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C.M.A.No.2518 of 2019

M.DHANDAPANI,J.
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C.M.A.No.2518 of 2019

09.11.2023