



WEB COPY



CMA.No.3865 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.01.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3865 of 2019

Ravi

... Appellant

Vs.

1. M/s.URC Construction (P) Ltd.,
Rep by its Proprietor
No.119, Power House Road,
Erode & Taluk.

2. The Branch Manager,
The New India Assurance Company Ltd.,
No.1360, E.V.N.Road,
Amman Complex, 1st floor
Erode – 638 011.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.05.2011 made in M.C.O.P.No.88 of 2010 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court) Thiruvavarur.

For Appellant : Ms.K.Sasikala
for Mr.M.Thamizhavel

For Respondents : No appearance
Mr.J.Chandran for R2



CMA.No.3865 of 2019

WEB COPY

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 19.05.2011 in M.C.O.P.No.88 of 2010 passed by the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court) Thiruvavarur.

2. The case of the claimant/appellant is that on 06.02.2010 while the appellant was riding a motor cycle bearing Regn.No.PY-02-E-7182 proceeding on the Myladhuthurai-Thiruvavarur main road from South to North direction, a TATA ACE bearing Regn.No.TN.33-AF-6280 coming in the opposite direction, hit him, due to which, the appellant fell down and sustained grievous injuries all over the body. Claiming that the appellant was running a Milk Depot and earning about Rs.9,000/- per month and the driver of the TATA ACE is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.5,00,000/-.



CMA.No.3865 of 2019

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.

4. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,00,934/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Partial Permanent Disability	35,000/-
Pain and sufferings	30,000/-
Extra Nourishment	5,000/-
Attender Charges	1,000/-
Medical Expenses	19934/-
Loss of Income	10000/-
Total	1,00,934/-

5. The Appellant/claimant has met with an accident on 06.02.2010 and sustained fracture below the knee of the right leg, as a result of the accident



CMA.No.3865 of 2019

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 respondents 1 and 2 jointly and severally to pay the aforesaid compensation to the Appellant/claimant.

6. Before the Tribunal, on the side of the claimant, two witnesses were examined as PW1 and PW2 and exhibits were marked as Ex.P1 to Ex.P12. On the side of the respondents, neither witness examined nor document marked.

7. Heard the learned counsel for the appellant and the learned counsel 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 sustained fracture below the knee of the right leg and also sustained grievous injuries. He has taken treatment from



CMA.No.3865 of 2019

06.02.2010 to 16.02.2010 as in-patient and a steel plate was fixed and the PW2/Doctor assessed the disability at 35%. The claimant was running a Milk Depot and aged about 40 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.

9. The learned counsel for the second respondent has submitted that the rider of the motor cycle did not have valid and effective driving license on the date of the accident. He denies that the vehicle had valid R.C., F.C and permit on the date of the accident. The injuries sustained by the appellant are simple in nature and the claim for medical expenses also not supported with documentary evidence. He further submitted that the income of the appellant is Rs.9000/- p.m and the amount claimed for transport to hospital, attender expenses, extra nourishment and medical expenses were not supported with bills or receipts. Hence, he prays to dismiss the appeal.

10. The accident occurred on 06.02.2010 at 03.30 p.m., on the Myladhuthurai-Thiruvarur main road near Khadar Fruit Shop. Due to the accident, the claimant sustained fracture on right leg and grievous injuries. Thereafter, the



CMA.No.3865 of 2019

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 TATA ACE bearing Regn.No.TN.33-AF-6280, 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 a total compensation of Rs.1,00,934/-. Due to the said accident, he sustained fracture on the right leg and grievous injuries. Further, the compensation awarded by the Tribunal under the head 'partial permanent disability' at Rs.35,000/- and 'loss of income' at Rs.10,000/- appears to be very low. It is also contended that the Tribunal has not adopted proper multiplier while fixing the award. Therefore, the compensation granted by the Tribunal especially with regard to 'partial permanent disability' is to be enhanced.

12. This Court is of the considered opinion that the appellant/claimant was aged about 40 years at the time of the accident. The PW2/Doctor, after considering the multiple injuries, assessed the partial permanent disability of the appellant at



CMA.No.3865 of 2019

35% through Ex.P11 and Ex.P12. Due to the accident, he was unable to perform his routine duties in a normal manner. He had taken treatment at Krishna Hospital, Myladhuthurai, as in-patient from 06.02.2010 to 16.02.2010 as seen from the Ex.P.11/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.1000/- per percentage in respect of 'partial permanent disability' is inadequate. Therefore, this Court is inclined to enhance the compensation under the head of 'partial permanent disability' by taking into consideration a sum of Rs.2000/- for each percentage and hence, it amounts to a sum of Rs.70,000/- (35%x2000). A perusal of Ex.P.11/Disability certificate would reveal that the appellant was admitted in the Hospital as in-patient from 06.02.2010 to 16.02.2010. Therefore, it would be appropriate to award a sum of Rs.15,000/- under the head, 'Loss of income' during the period of treatment as in-patient instead of Rs.10,000/-. Accordingly, Rs.15,000/- is awarded towards 'Loss of Income'.

13. Insofar as the other heads of the compensation are concerned, the



CMA.No.3865 of 2019

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.

14. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,00,934/- to Rs.1,40,934/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Award Amount (Rs.)</i>
Partial permanent disability	35,000/-	70,000/-
Pain and Sufferings	30,000/-	30,000/-
Extra Nourishment	5,000/-	5,000/-
Attender Charges	1,000/-	1,000/-
Medical Expenses	19,934	19,934/-
Loss of income	10,000/-	15,000/-
Total	1,00,934/-	1,40,934/-

15. Conclusion:

In the result, this appeal is allowed. However, the rate of interest



CMA.No.3865 of 2019

fixed by the Tribunal at the rate of 7.5% is confirmed. The respondents 1 and 2 are jointly and severally directed to deposit the enhanced amount i.e, Rs.1,40,934/- along with interest, after deducting the amount already deposited, if any, to the credit of M.C.O.P.No.88 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to 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. Since the compensation amount now awarded is Rs.1,40,934/-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount. No costs.

20.01.2023

Index : Yes/No
Internet : Yes/No
gv



WEB COPY



CMA.No.3865 of 2019

A.A.NAKKIRAN, J.

gv

To

1. The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate Court) Thiruvarur.
2. The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.3865 of 2019



WEB COPY



CMA.No.3865 of 2019

20.01.2023