



C.M.A.No.358 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.03.2023

Pronounced On : 27.06.2023

CORAM:

THE HON'BLE MRS JUSTICE R. KALAIMATHI

C.M.A.No.358 of 2019

B.Thirumalai

...Petitioner

Vs.

1.Anandhalakshmi

2.National Insurance Co.Ltd.,

No.751, Anna Salai,

Chennai – 600 002.

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, seeking to set aside the fair and decreetal order in M.C.O.P.No.3735 of 2005 dated 18.12.2008 passed by the Motor Accident Claims Tribunal, II Court of Small Causes Judge, Chennai and allow the Original Petition.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.D.Bhaskaran – R2

: R1-Served-No Appearance



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JUDGMENT

WEB COPY The present appeal is preferred by the Claimant, assailing the judgment passed by the Motor Accident Claims Tribunal II Court of Small Causes Judge, Chennai in M.C.O.P.No.3735 of 2005 dated 18.12.2008.

2.The above said petition was filed by the Claimant under Section 166 of the Motor Vehicles Act, Rule 3 of Motor Accident Claims Tribunal (MACT Rules) claiming compensation of Rs.4,00,000/- came to be partly allowed by the Tribunal holding that the Claimant is entitled for compensation of Rs.89,170/- at interest of 9.5 per cent per annum from the date of petition that is 09.06.2005 till its realization. Owner of the erred vehicle and the National Insurance Co. Ltd. were held jointly and severally liable to pay the amount of compensation to the claimant herein.

3.Claim petition was filed by the claimant on account of an accident that had taken place on 21.05.2005 when he was traveling as a pillion rider in a motor cycle bearing registration No.TN25W8574 from Satya Moorthy National to Manali along the Manali express road, opposite to Atlas Petrol Pump in Sathangadu Police Station Limit, Chennai. A Lorry bearing registration No.TN27Y4586 came in a dangerous speed and driven in a rash and negligent manner, dashed against the petitioner. Eventually the



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appellant sustained following grievous injuries.

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(i). Fracture of post aspect of Right Lateral Condyle.

(ii). Fracture of right ring finger.

4.Before the Tribunal, the First Respondent remained *ex-parte* and the second respondent denied the manner in which the accident taken place and the appellant was put to strict proof of that the driver of the offending vehicle had a valid driving license, and the details of injuries.

5.On behalf of the claimant, two witnesses were examined, exhibits P1 to P6 were marked. On behalf of the second respondent neither any witness was examined nor any exhibit was marked.

6.The tribunal, after analyzing the oral and documentary evidence, and upon hearing the both sides' agreements, awarded a sum of Rs.89,170/- with 9.5 per cent per annum as mentioned *supra*.

7.Learned Counsel for the Appellant would strenuously argue that for no reason the Tribunal reduced the disability from 40 per cent to 34 per cent. Under the head of medical expenses, pain and suffering, transportation and under the head of extra nourishment the amounts awarded were not sufficient.



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8.*Per contra*, learned Counsel for the second respondent/Insurance

Company would vehemently contend that only for four days the appellant was admitted in the hospital as an inpatient and he was only given conservative treatment. He had only suffered fracture of little finger for which the disability awarded was 40 per cent which is on the higher side. The amounts awarded under the above said heads are reasonable, though higher rate of interest finds a place in the award, the amount is deposited into Court and stated that it is absolutely not necessary to enhance the compensation.

9.The claimant was aged about 21 years on the date of accident and sustained fracture of post aspect to right lateral condyle, right ring finger and he was inpatient in Sugam Hospital Chennai for four days. Where he was treated and was given conservative treatment. Dr K.J.Mathiazhagan was examined as PW4 and assessed that claimant suffered partial and permanent disability at 40 per cent. This Court feels that this assessment decided by the Tribunal as 34 % appears to be appropriate, and granted Rs.17,000/- in addition to the amount already awarded for loss of earning.

10.As the claimant happened to be a mechanic, definitely he would face difficulties in the course of his work as he has sustained fracture in the



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right ring finger, therefore, under the head of pain and suffering a sum of

Rs.5,000/- is granted in addition to the amount which was already awarded.

Under the head of loss of earning, considering the nature of injury sustained by him and the fact that the appellant is a mechanic and an additional sum of Rs.8,000/- is awarded under the head of loss of earnings too.

11.As regards the compensation under the heads namely, transportation, medical expenses, pain and suffering, this court is of the opinion that the court does not warrant any interference and the amounts awarded are quite reasonable.

S.No.	Description	Amount Awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Compensation for Partial and Permanent Disability.	Rs.34,000/-	17,000/-	Rs.51,000/-
2	Pain and Suffering.	Rs.20,000/-	Rs.5000/-	Rs.25,000/-
3	Transport to Hospital.	Rs.1000/-	Rs.0/-	Rs.1000/-
4	Extra Nourishment	Rs.4000/-	Rs.0/-	Rs.4000/-
5	Damages to clothing	Rs.1000/-	Rs.0/-	Rs.1000/-
6	Medical Expenses	Rs.9,170/-	Rs.0/-	Rs.9,170/-
7	Loss of Earnings	Rs.20,000/-	Rs.8000/-	Rs.28,000/-



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	Total	Rs.89,170/-	Rs.1,19,170/-
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12.In the result,

(I) The Civil Miscellaneous Appeal is partly allowed. No costs.

(II) The Compensation awarded by the Tribunal is enhanced to Rs.1,19,170/- from Rs.89,170/-.

(III) The appellant/claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(IV) The 2nd respondent/Insurance Co. is directed to deposit the enhanced compensation amount of Rs.1,19,170/- (excluding the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.3735 of 2005 dated 18.12.2008 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai within a period of eight weeks from the date of receipt of a copy of this judgment.

(V) On such deposit being made, the appellant/claimant is at liberty to withdraw the same by filing necessary cheque application.

27.06.2023

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

To:

1.The Judge
2nd Small Causes Court,
Motor Accidents Claim Tribunal.

2.The Section Officer,
V.R.Section,
High Court, Chennai.



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R. KALAIMATHI,J.

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Pre-Delivery Judgment
in
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