



C.M.A.No.1953 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1953 of 2023

R.Hari @ Elangovan

... Appellant

Versus

1.R.Indirakumar

2.The New India Assurance Company Ltd.,
No.45, Moore Street,
Chennai-1.

(R1 remained *ex-parte* before the Tribunal)

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 17.04.2009 passed in M.C.O.P. No.901 of 2005 on the file of the Motor Accidents Claims Tribunal, VI Judge, Court of Small Causes, Chennai.

For Appellant : Mr.G.Balaji Prasad

For R2 : Ms.S.Dakshnamoorthy

JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.901 of 2005, dated 17.04.2009.



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2.The appellant/claimant has filed the instant appeal seeking enhancement of compensation.

3.The appellant filed the claim petition stating that on 17.01.2005 at about 21.30 hours, while he was travelling as passenger in the auto rikshaw along with his brother, the driver of the auto rickshaw drove the same in rash and negligent manner, dashed against the centre median; that as a result of which, the appellant sustained grievous injuries and thus, he was entitled for compensation.

4.The 1st respondent-owner of the auto rikshaw remained *ex-parte* before the Tribunal.

5.The 2rd respondent/Insurance Company resisted the claim petition and stated that the appellant had taken eight days to lodge the complaint against the driver of the auto rickshaw; that the driver of the auto rickshaw was not guilty of rash and negligent driving; and that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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WEB COPY 6.Before the Tribunal, the appellant examined himself as P.W.1 and Doctor as P.W.2 and marked Exs.P1 to P9. The respondent did not examine any witness or mark any document.

7.The Tribunal after considering the oral and documentary evidence on record, awarded a sum of Rs.81,450/- as compensation to the appellant.

8.The learned counsel for the appellant submitted that although the Tribunal had accepted the disability certificate issued by the Doctor, had awarded only a sum of Rs.1,000/- per percentage of disability instead of Rs.2,000/-. The amount awarded by the Tribunal under other heads is also meagre and prayed for enhancement of compensation.

9.The learned counsel for the appellants submitted that the 1st respondent remained *ex-parte* before the Tribunal and therefore, he requested this Court to dispense with notice to the 1st respondent and he had also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.



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WEB COPY 10.The learned counsel for the 2nd respondent per contra submitted the award of compensation is just and reasonable and prayed for dismissal of the appeal. The learned counsel further submitted that in event of this Court enhancing the compensation, the 2nd respondent should not be saddled with payment of interest for the delay period as the appeal was filed in the year 2010 and the appellant has not taken any steps to bring up the appeal for hearing.

11.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12.On perusal of the records, it is seen that the Tribunal had accepted the disability certificate issued by the Doctor assessing the disability at 45%. Since the accident is of the year 2005, this Court is of the view that the Tribunal ought to have awarded a sum of Rs.2,000/- per percentage of disability and hence, the compensation under the head permanent disability has to be enhanced to Rs.90,000/- for 45% of disability. The compensation awarded by the Tribunal under the head



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transport to hospital and extra nourishment can be enhanced to Rs.5,000/- each. Considering the nature of the injuries, the compensation under the head pain and sufferings can be enhanced to Rs.20,000/-. Since the appellant was in the hospital for nearly 55 days, he is entitled to attender charges of Rs.10,000/-. Thus, the compensation awarded by the 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.	Loss of Earning	15,000	15,000	Confirmed
2.	Transport to hospital an Extra Nourishment	8,000	10,000	Enhanced
3.	Medical Expenses	2450	2450	Confirmed
4.	Mental Agony	1000	1000	Confirmed
5.	Pain and Sufferings	10,000	20,000	Enhanced
6.	Permanent Disability	45,000	90,000	Enhanced
7.	Attender Charges	-	10,000	Granted
	Total	81,450	1,48,450	Enhanced by Rs.67,000/-



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13.As regards interest part, it is seen that the appellant addressed a letter to the Registry to list the above appeal. It is also seen that the Registry had misplaced the paper and hence, it cannot be said that the appellant was at fault for the delay in numbering the appeal. Hence the appellant would be entitled for the interest for the enhanced compensation amount determined by this Court. However, the appellant would be entitled to interest at 7.5% per annum and not 9.5% per annum as fixed by the Tribunal.

14.With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.81,450/- is hereby enhanced to Rs.1,48,450/-, together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. However, the



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appellant is not entitled to interest for a period of 198 days, as per the order of this Court dated 10.08.2023 in M.P.No.1 of 2010. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Motor Vehicle Accident Tribunal,
VI Judge, Court of Small Causes, ,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

rst/dpa

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