



C.M.A.No.3728 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3728 of 2019

Y.Mohammed Younis

... Appellant

Vs

1. S.Sankar

2. The Oriental Insurance Company Limited,
Motor III Party Claims Office,
Jawaharlal Nehru Salai, Oil Mill Shop,
State Bank of India Upstairs,
Thiruvallore.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.06.2006 made in M.C.O.P.No.578 of 2004, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Poonamallee.

For Appellant : Mr.C.R.Suresh

For Respondents :

For R1 : set ex-parte

For R2 : Mr.S.Jeyaram



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JUDGMENT

WEB COPY The Civil Miscellaneous Appeal is filed by the appellant/claimant seeking enhancement of compensation granted by the Tribunal in the award dated 28.06.2006 made in M.C.O.P.No.578 of 2004 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Poonamallee.

2. The brief facts of the case is as follows:

On 06.10.2004 at about 10.30 a.m., when the appellant/claimant viz., Y.Mohammed Younis was riding his Motor Cycle bearing Registration No.TN-09-AA-4195, keeping extreme left, towards Porur on the Arcot Road near Valasaravaakkam, at that time, a Lorry bearing Registration No.TN-23-Y-9699 driven by its owner-cum-driver, came in a rash and negligent manner, endangering the public safety, dashed the appellant/claimant's Motor Cycle from back side and caused the accident. In the said accident, the appellant/claimant sustained fracture both bones of left leg, degloving injury with extensive loss of skin and flesh over right leg from hip level to below the knee level exposing bones, extensive loss of skin over left leg and other grievous multiple injuries all over the body. Hence, the appellant/claimant made a claim for a sum of Rs.8,00,000/- as compensation as against the owner-cum-driver



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of the offending vehicle, first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent herein.

3. The first respondent/owner of the vehicle remained absent before the Motor Accidents Claims Tribunal, and therefore, he was set ex-parte.

4. The second respondent/Insurance Company contested the Claim Petition by filing a Counter Statement, *inter alia* disputing their liability on the ground that the accident is not reported by the first respondent/owner of the vehicle and the first respondent/owner of the vehicle not produced the vehicular documents for verification and return, and hence, they are not liable to indemnify the first respondent/owner of the vehicle. Further, they denied the age, occupation, monthly income, period of treatment and disability of the appellant/claimant and the nature of injuries sustained by him and prayed for dismissal of the Claim Petition.

5. Before the Claims Tribunal, in order to prove the claim, the appellant/claimant examined himself as P.W.1 besides examining one



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Dr.Saichandran, Orthopaedic Surgeon (Fracture Specialist) as P.W.2 and marked 7 documents as Exs.P.1 to P.7. On the side of the second respondent/Insurance Company, no witnesses were examined and no documents were marked as Exhibits.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was caused due to the rash and negligent driving of the owner-cum-driver of the Lorry bearing Registration No.TN-23-Y-9699 and the second respondent, being the insurer of the offending vehicle, the second respondent/Insurance Company is liable to pay the compensation to the appellant/claimant with liberty to recover the same from the first respondent/owner of the vehicle by initiating necessary proceedings. By arriving at such a conclusion, the Motor Accidents Claims Tribunal made the calculation under different heads and passed an award for a total sum of Rs.3,98,783/- with interest at the rate of 7.5% per annum from the date of Petition till payment as compensation to the appellant/claimant. The break up details of the compensation amount awarded by the Claims Tribunal are as follows:-



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S.No.	Head	Amount
1.	45% of Disability	Rs. 45,000/-
2.	Pain and sufferings	Rs. 1,00,000/-
3.	Loss of Income, Transport to Hospital, Extra Nourishment	Rs. 50,000/-
4.	Medical Expenses	Rs. 53,783/-
5.	Future Loss of Earning Power	Rs. 1,50,000/-
Total		Rs. 3,98,783/-

7. Aggrieved against the quantum of compensation awarded by the Claims Tribunal, the appellant/claimant has filed the present Appeal for enhancement.

8. The learned counsel appearing for the appellant/claimant submitted that, due to the accident, rider of the bicycle viz., Y.Mohammed Younis sustained grievous injuries. The deceased was an Electrician and Plumber/was a Self-Employee. Ex.P1 is the Xerox True Copy of FIR, Ex.P2 is the Discharge Summary, Ex.P3 is the Certificate given by the Chennai Kilpauk Government Hospital, Ex.P4 is the Bills and Receipts of medical expenses, Ex.P5 is the photos showing injuries, Ex.P6 is the Disability Certificate and Ex.P7 is the Radioactive Photo (X-Rays). He



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further contended/submitted that the Claims Tribunal has failed to award compensation under each and every heads instead of awarding compensation by combining many heads together and the Tribunal has not adopted proper multiplier in awarding compensation.

9. The learned counsel for the second respondent/Insurance Company denied the mode of accident, age, occupation, monthly income, period of treatment, disability of the appellant/claimant, nature of injuries sustained by the appellant/claimant and the expenses incurred by the appellant/claimant. He submitted that the appellant/claimant did not possess valid driving license at the time of the accident. Hence, the second respondent/Insurance Company is not liable to pay any compensation claimed by the appellant/claimant and his claim is very excessive. Therefore, he prays for dismissal of the appeal.

10. Keeping in view the submission made by the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company, this Court has gone through the materials available on record. It is seen from the records that the Claims Tribunal has also accepted the fact that the appellant/claimant was an



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Electrician and Plumber/was a Self-Employee at the time of accident and the claim is made at Rs.10,000/- per month. The Claims Tribunal held that in the absence of any proof for income, claiming a sum of Rs.10,000/- per month is not reasonable. The Claims Tribunal further held that in the absence of any proof for Transportation Charges, Extra Nourishment and Damages to the Vehicle, claiming a sum of Rs.60,000/- is not reasonable but the Claims Tribunal has awarded a sum of Rs.50,000/- towards Loss of Income, Transportation Charges and Extra Nourishment. The Claims Tribunal also awarded a sum of Rs.1,50,000/- towards Future Loss of Earning Power. Therefore, this court is of the view that the compensation awarded by the Claims Tribunal towards Loss of Income, Transportation Charges and Extra Nourishment is very much on the meager side and the same needs interference.

11. Therefore, this Court enhanced the compensation awarded by the Claims Tribunal towards Loss of Income, Transportation Charges and Extra Nourishment from Rs.50,000/- to Rs.75,000/-. Further, on perusal of records, the Claims Tribunal has not awarded any amount towards Attender Charges, for which the appellant/claimant is entitled to. Hence, a sum of Rs.10,000/- under the head of Attender Charges is awarded.



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Insofar as the compensation awarded under the heads of i) Disability at 45% ii) Pain and Sufferings iii) Medical Expenses and iv) Future Loss of Earning Power are concerned, the same are found just and fair and hence, they stand confirmed.

12. Thus, the total compensation payable to the appellant/claimant is as hereunder:-

Sl.No.	Head	Amount awarded by the Tribunal	Amount awarded by this Court
1.	45% of Disability	Rs. 45,000/-	Rs. 45,000/-
2.	Pain and Sufferings	Rs. 1,00,000/-	Rs. 1,00,000/-
3.	Loss of Income, Transport of Hospital and Extra Nourishment	Rs. 50,000/-	Rs. 75,000/-
4.	Medical Expenses	Rs. 53,783/-	Rs. 53,783/-
5.	Future Loss of Earning Power	Rs. 1,50,000/-	Rs. 1,50,000/-
6.	Attender Charges	---	Rs. 10,000/-
	Total	Rs. 3,98,783/-	Rs. 4,33,783/-

13. Thus, the appellant/claimant is entitled to a sum of Rs.4,33,783/- together with interest at the rate of 7.5% per annum.



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14. In the result,

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

(ii) The compensation awarded by the Claims Tribunal is enhanced from Rs.3,98,783/- to Rs.4,33,783/-, which shall carry interest at the rate of 7.5% per annum from the date of numbering of appeal till the date of deposit. The apportionment shall be as ordered by the Claims Tribunal.

(iii) The appellant/claimant is directed to pay the appropriate Court Fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of appropriate Court Fee.

(iv) The second respondent/Insurance Company is directed to deposit the enhanced amount of compensation of Rs.4,33,783/- along with interest and costs before the Claims Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Claims 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.

(v) The appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any,



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A.A.NAKKIRAN, J.

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already withdrawn by filing necessary applications before the Claims Tribunal.

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Index : Yes/No

Neutral Citation : Yes/No

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To:

1. The Motor Accidents Claims Tribunal,
Subordinate Judge, Poonamallee.
2. The Section Officer,
Vernacular Section,
High Court of Madras.

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