



Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1609 of 2019

M.Govindaraj @ Govindaraji,
S/o Manickkam

.. Appellant

Vs.

1. Indus Ind Bank Limited,
No.95, J.N.Road,
Opp. Taluk Office,
Thiruvallur.

2. The Branch Manager,
Cholamandalam M.S.General Insurance
Company Limited,
Dare House, 2nd Floor,
New No.2, NSC Bose Road,
Chennai-1.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and Decree dated 09.09.2014 in M.C.O.P.No.488 of 2012 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Vellore.

For appellant : M/s.D.Jeevitha for M/s.R.Nalliyappan

For respondent: No appearance for R-1

Mr.J.Michael Visuvasam for R-2

Page No.1/7



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Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

JUDGMENT

This appeal is filed challenging the Award and decree, dated 09.09.2014 passed by the Tribunal in M.C.O.P.No.488 of 2012 on the file of the Chief Judicial Magistrate, Vellore.

2. On 17.07.2011 at about 2 p.m., when the claimant was driving two-wheeler from Poigai to Anpoondi in N.H.46 road, from West to East on the left side of the road, a Bolero car bearing Reg.No.TN-20-BE-303, driven by its driver in a rash and negligent manner with high speed, dashed against the claimant's on-going two-wheeler from behind. Due to the accident, the claimant fell down and in the accident, the claimant's right leg was grievously injured. The claimant was taken to Government Vellore Medical College and Hospital, Vellore and admitted therein. A complaint was lodged by the father of the claimant before the Virinchipuram Police Station and it was registered in Crime No.244 of 2011 for the offences under Sections 279 and 337 IPC. The claimant was aged about 27 years at the time of accident. He was a Mason and earning Rs.10,000/- per month. Due to the accident, he was unable to walk or do normal work without the help of others. Hence, the claimant has filed the claim petition claiming Rs.10

Page No.2/7



Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

lakhs as compensation.
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3. The first respondent has filed counter before the Tribunal denying the averments made in the petition filed by the claimant.

4. Learned counsel for the appellant/claimant submitted that the claimant sustained injuries and the percentage of disability was 45% and hence, the Tribunal ought to have adopted the multiplier method and the Tribunal, instead of adopting the multiplier method, had adopted only 'percentage method', which warrants interference by this Court. Further, the Tribunal ought to have awarded more sum on the head 'extra nourishment' and also for loss of income during the relevant period of treatment. Therefore, the impugned Award passed by the Tribunal does not reflect "just" compensation, which requires to be enhanced.

5. Learned counsel appearing for the second respondent/Insurance Company submitted that the manner in which the accident had occurred and the liability of the Insurance Company to pay the compensation, are admitted. At the relevant period of time relating to percentage of Rs.3,000/- per percentage, whereas, the Tribunal awarded only Rs.2,000/- per percentage. The second respondent/Insurance Company justified the amounts awarded under the other

Page No.3/7



Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

heads of compensation, and therefore, the learned counsel prayed for dismissal of the present appeal.

6. Heard both sides and perused the materials available on record.

7. The accident is not disputed by both sides' counsel, so also the liability of the Insurance Company to pay the compensation.

8. As far as the quantum of compensation awarded by the Tribunal, though the disability is not in dispute, and though the Tribunal adopted 'percentage' method, but they have awarded Rs.2,000/- per percentage of disability. During the relevant period, Rs.3,000/- per percentage should have been awarded, and therefore, calculating the loss of income on that head, i.e. $\text{Rs.3,000/-} \times 45\% = \text{Rs.13,500/-}$. Thus, the amount awarded by the Tribunal under the head 'disability' is hereby enhanced to $\text{Rs.3,000} \times 45 \times 12 = \text{Rs.16,20,000/-}$.

9. Further, there is no material to show that apart from the Award passed by the Tribunal under the other heads, the appellant/claimant is not in a position to canvass this Court that the Award under the other heads, does not reflect the



Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

'just' compensation.
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10. While re-appreciating the entire evidence, instead of awarded the compensation under the head 'disability', this Court does not find any perversity in appreciation of the evidence. The compensation awarded by the Tribunal is 'just' compensation.

11. The amounts awarded by the Tribunal under the other heads, are just and fair, and hence, they are confirmed.

12. Therefore, the appeal is partly allowed with the above modification in the head 'disability'. There shall be no order as to costs in this appeal.

13. The modified award amount carries interest @ 7.5% from the date of claim petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the modified award amount within a period of six weeks from the date of receipt of a copy of this judgment and the claimant is permitted to withdraw the same. Since the MCOP is filed in the year 2011 and this appeal is filed with condonation of delay of 345 days, in the year 2019, except not awarding the compensation for the delay period, i.e., the claimant is not entitled

Page No.5/7



Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

to interest for the delay period and while calculating the interest, the Tribunal shall consider the same after deducting the interest for 345 days.

21.09.2023

CS

To

1. The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Vellore.
2. The Section Officer, VR Section, High Court, Madras.



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Judgment dated 21.09.2023
in C.M.A.No.1609 of 2019

P.VELMURUGAN, J

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C.M.A.No.1609 of 2019

21.09.2023

Page No.7/7