



C.M.A.No.1045 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.M.A.No.1045 of 2019

T.Jotheeswaran (Minor)
S/o.Kumari
(Minor Rep by Mother Kumari)
Vathiarpatti, Mottur Village,
Ananganallore Post,
Gudiyatham Taluk,
Sunnambukara Street,
Vellore District.

... Appellant

-VS-

1.K.Ashok Kumar Mahalik
2.The Branch Manager,
Bajaj Alliance General Insurance Company Ltd.,
4th Floor, Prince Tower,
25/26, College Road, Nungambakkam,
Chennai.

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.05.2012 in M.C.O.P.No.476/2010 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore.

For Appellant	: M/s.D.Jeevitha For Mr.R.Nalliyappan
For Respondent (For R2)	: Mr.T.K.Premkumar
(For R1)	: Notice Unserved



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J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of the compensation awarded in M.C.O.P.No.476/2010 passed by the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Vellore dated 21.05.2012 .

2. It is the case of the appellant/claimant that on 01.05.2008 at about 03.15 p.m., the appellant/claimant along with his mother were trying to cross the road, the driver of the car belonging to the first respondent, driving the car, in a rash and negligent manner, dashed against the appellant/claimant and his mother. Due to the accident, the appellant and his mother sustained multiple injuries all over his body and admitted in the hospital for treatment. Thereafter, the appellant has filed a claim petition before the Tribunal against the respondents, claiming a sum of Rs.5,00,000/- as compensation.

3. Before the Tribunal, during trial, in order to prove his case, the appellant has examined three witnesses and marked as many as 13 documents viz., Exs.P1 to P13. On the side of the respondents, there was no witness examined and no document was adduced.



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4. After analyzing the oral and documentary evidences and considering the pleadings made by both the parties, the Tribunal has come to the conclusion that the accident had taken place due to the rash and negligent driving of the driver of the motor bike. Therefore, the Tribunal has awarded a sum of Rs.1,08,000/- as compensation.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come forward with this appeal before this Court.

6. Learned counsel for the appellant submitted that the Doctor, who treated the appellant, has assessed the disability at 50% whereas the Tribunal simply taken 30% as disability and awarded Rs.60,000/- towards disability, which is erroneous. The Tribunal has not awarded any amount towards attender charges. Further the amount awarded in respect of other heads is also very meager. Hence, the learned counsel for the appellant prays for enhancement of compensation.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company submitted that the respondent has denied all the averments



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made by the appellant in the claim petition and filed a counter to that effect.

The learned counsel further submitted that the accident had occurred due to the negligence on the part of the appellant. The Tribunal has awarded compensation to the appellant, which is highly excessive and there is no basis for awarding such compensation. Hence, the learned counsel prays to dismiss the appeal.

8. Heard the learned counsel for the appellant as well as the respondents and also perused the available materials on record before this Court.

9. The appellant is the claimant. It is not disputed that the accident had occurred only due to the rash and negligent driving of the driver of the car. On careful reading of the records, it is found that the Doctor, who treated the injured, assessed the disability at 50%. As rightly submitted by the learned counsel for the appellant that the Tribunal has awarded a sum of Rs.2000/- per percentage towards permanent disability. Admittedly, the accident had happened in the year 2008. Considering the injuries sustained by the appellant, this Court is inclined to fix the disability at 45% and awarded compensation for a sum of Rs.90,000/- (45% X 2000 per percentage) towards permanent disability. Regarding the extra nutritious, the Tribunal has awarded a sum of



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Rs.3,000/- and the same is modified as Rs.8,000/- and a sum of Rs.5,000/- is awarded towards attender charges, which the appellant is entitled for.

10. The award amount of compensation is modified under the following heads :-

Sl.No	Heads	Amount awarded by the Trial Court (Rs.)	Amount awarded by this Court (Rs.)
1	Transportation	5000	5000
2	Medical exp.	10,000	10,000
3	Extra nutritious	3000	8000
4	Pain and sufferings	25,000	25,000
5	For Disability	60,000	90,000
6	Attender charge		5000
	Total	1,08,000	1,43,000

11. In the result, the compensation awarded by the Tribunal is modified as above and the appeal is allowed. However, there shall be no order as to costs. However, the appellant is not entitled to get interest for the award amount from 21.05.2012 to 19.02.2016.

12. The second respondent is directed to deposit the award amount, along with interest at 7.5% p.a., after deducting interest for the period from 21.05.2012 to 19.02.2016, to the credit of the claim petition before the Tribunal, within a period of four weeks from the date of receipt of a copy of



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this order.

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13. On such deposit, the appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

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Rli

Index: Yes/No

NCS : Yes/No

To

The Chief Judicial Magistrate,
The Motor Accidents Claims Tribunal,
Vellore.



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M.DHANDAPANI, J.

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