



CMA(MD).No.108 of 2019

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 28.03.2023**

**PRONOUNCED ON : 03.04.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.108 of 2019**

Sangan @ Sankar

... Appellant

vs.

1.P.Soundarapandian

2.M/s.Shriram General Insurance Company Ltd.,  
30 HAK Road (Ground Floor)  
Chinna Chokkikulam  
Near ICICI Bank, Madurai

...Respondents

**PRAYER:-** Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to call for the records relating to MCOP.No. 420 of 2013 on the file of the Motor Accident Claims Tribunal Cum Subordinate Judge, Kulithalai and set aside the decreetal order and judgment passed in the same on 27<sup>th</sup> September 2018 and allow this Civil Miscellaneous Appeal.

|               |                   |
|---------------|-------------------|
| For Appellant | : Mr.RM.Sivakumar |
| For R1        | : No appearance   |
| For R2        | : Mr.D.Sivaraman  |



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## **J U D G M E N T**

The appeal has been filed by the claimant seeking enhancement of compensation arising out of an award in MCOP.No.420 of 2013 on the file of the Motor Accident Claims Tribunal, Kulithalai, Karur District.

2.According to the injured claimant, he is an agricultural coolie worker who was earning a sum of Rs.250/- per day and while he was riding a bicycle on 06.03.2011 at about 9.00 a.m in Trichy and Dindigul main road, a Maruthi Omni Car belonging to the first respondent and insured with the second respondent was driven in a rash and negligent manner and dashed against the petitioner. In the said accident, the claimant sustained multiple injuries all over the body.

3.According to the claimant, he had sustained fracture in the temporal region, grievous injuries in the left ear, left shoulder and head. He was admitted to the Government Hospital, Dindigul and later Government Rajaji Hospital at Madurai where he was an inpatient for 3 days. The petitioner had claimed a sum of Rs.4,00,000/- as compensation.

4.The owner of the offending vehicle had remained exparte and the Insurance Company had filed a counter contending that there is no



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driving license for the driver of the first respondent's vehicle and the injured claimant himself has contributed to the accident by suddenly crossing the road. The Insurance Company has also disputed the quantum of compensation claimed in the petition.

5.The Tribunal after considering the oral and documentary evidence, rejected Exhibit P2-Disability Certificate filed by the claimant on the ground that no records have been placed before the Court to indicate that the said disability was calculated as per the Government Norms. The Tribunal further found that Exhibit C1-Medical Records of the Government Rajaji Hospital, Madurai do not disclose any fracture in the temporal bone. The Tribunal had rejected Exhibit P3-X-ray on the ground that it was taken 6 years after the accident. The Tribunal has also rejected the claim of the claimant for medical expenses to a tune of about Rs.50,000/- on the ground that no document has been marked. The Tribunal ultimately awarded a sum of Rs.73,500/-. The said award is under challenge in the present appeal by the claimant seeking enhancement .

6.The learned counsel for the appellant had contended that the claimant had suffered fracture in the temporal bone and the X-ray is



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marked as Exhibit P3 and it is supported by the evidence of the Doctor who was examined as PW3. He had further contended that the medical records of the Government Rajaji Hospital marked as Exhibit C1 will also indicate that there is a head injury. Therefore, he contended that the Tribunal ought to have considered 40% permanent disability based upon the disability certificate-Exhibit P2 and ought to have awarded a compensation under the head of permanent disability.

7.Per contra, the learned counsel appearing for the second respondent had contended that the injured claimant was admitted as an inpatient in the Government Rajaji Hospital only for a period of 3 days and Exhibit C1 which is the medical record of the said Hospital does not disclose any fracture in the temporal bone. If really there was a fracture in the temporal bone, the claimant would have undergone major surgery and he would have stayed in the Hospital for a longer period. He had further contended that Exhibit P2-Disability Certificate has been issued by a Doctor after 6 years from the date of accident. It is not known how this certificate was issued after a period of 6 years. That apart, PW3 has categorically admitted that he has issued this certificate without obtaining any opinion from a Specialist Doctor. He had further admitted



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that the Doctor has not treated the claimant and he was not aware of the treatment that was given to the claimant. Therefore, the learned counsel appearing for the second respondent had contended that the Tribunal was right in rejecting the prayer of the claimant under the head of permanent disability.

8.I have considered the submissions made on either side and perused the oral and documentary evidence.

9.The present appeal has been filed by the claimant seeking enhancement of compensation. The main grievance of the appellant is that the Tribunal has not awarded any amount towards permanent disability suffered by the injured claimant. The learned counsel for the appellant had relied upon Exhibit P2-Disability Certificate, Exhibit P3-X-ray, Exhibit C1-Medical Records of the Government Rajaji Medical College Hospital, Madurai and the deposition of Doctor who was examined as PW2.

10.A perusal of Exhibit P3-X-ray will indicate that the said X-ray has been taken on 27.11.2017. The Doctor who had prescribed for such an X-ray and issued Exhibit P2-Disability Certificate has been examined in the Court on 08.11.2017. During his examination on 08.11.2017, the



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said X-ray has been marked as Exhibit P3. It is not known how the x-ray that was taken on 27.11.2017 was marked as Exhibit P3 on 08.11.2017. Therefore, it creates doubt in the mind of the Court with regard to the actual date on which the X-ray was taken and marked before the Court.

11.During the cross examination of PW3, the Doctor has admitted that he has neither given treatment nor he is aware of the treatment received by the claimant. Considering the fact that the x-ray was taken 6 years after the date of accident and after the chief-examination, this Court is not inclined to accept the said document namely Exhibit P3 or the evidence of the Doctor namely PW3. A perusal of Exhibit C1 which is the medical record maintained by the Government Rajaji Hospital, Madurai reveals only a head injury and not any fracture in the temporal bone. Therefore, this Court is not in a position to accept Exhibit P2-Disability certificate issued by the Doctor to the effect that there was a fracture in the temporal bone. Therefore, the Tribunal was right in arriving at a finding that there is no legally acceptable document relating to the alleged disability sustained by the claimant arising out of the accident.



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12.The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.13,500/- towards loss of income for a period of 3 months and in total, a sum of Rs.73,500/- was awarded towards compensation to the injured claimant.

13.In view of the above said deliberations, this Court does not find any ground to interfere in the award of the Tribunal and enhance the award in favour of the claimant. This Civil Miscellaneous Appeal lacks merits and it stands dismissed. No costs.

03.04.2023

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
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To

1. The Motor Accident Claims Tribunal  
Cum Subordinate Judge,  
Kulithalai

2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR,J.**

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Pre-delivery Judgement made in  
**C.M.A(MD)No.108 of 2019**

**03.04.2023**