



Civil Miscellaneous Appeal No.1640 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1640 of 2024

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... Appellant

Vs.

1. Chinnusamy

2. Liberty Videocon General Insurance Co Ltd.,
Anmol Palai, No.88, G.N.Chetty Road,
Level 4, Unit No.E5 & F5, Thiyagaraya Nagar,
Chennai 600 017

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.765 of 2017 dated 06.03.2023, on the file of the Motor Accident Claims Tribunal/ I Additional District Judge Court, Namakkal.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.E.Rajadurai
for M/s.M.B.Gopalan and
Associates for R2



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JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed this appeal challenging the award passed by Motor Accident Claims Tribunal/ I Additional District Judge Court, Namakkal in M.C.O.P.No.765 of 2017 dated 06.03.2023.

2. The case of the claimant is that on 17.01.2017 he was travelling in a two wheeler at Kombai to Markeyan Kottai, Theni Main road and at about 12.15 pm, the offending vehicle was driven in a rash and negligent manner and it was coming from the opposite direction and it dashed on the two wheeler. As a result of which, the claimant sustained head injury, facial injury and soft tissue injury. The claimant underwent treatment as an in patient for nearly 12 days. PW2, who is the doctor who treated the claimant assessed the disability at 38.27 %. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.



3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

4. Having rendered such a finding, the Tribunal attributed 10% contributory negligence on the claimant on the ground that he was not wearing an helmet at the time of the accident.

5. The Tribunal thereafter proceeded to fix the total compensation at Rs.1,45,116/- under various heads as follows :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Partial disability [Rs.5000/- x 5]	Rs.25,000/-
2.	Pain and sufferings	Rs. 15,000/-
3.	Loss of Income	Rs. 6,000/-
4.	Medical expenses	Rs.94,240/-
5.	Attendant charges	Rs. 6,000/-
6.	Transportation	Rs. 7,500/-
7.	Extra Nourishment	Rs.7,500/-
	Total	Rs. 1,61,240/-



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Out of the above compensation, Rs.1,45,116/- was directed to be paid by the Insurance company with interest at the rate of 7.5% per annum.

6. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

7. Heard Mr.T.S.Arthanareeswaran, learned counsel for appellant/claimant and Mr.E.Rajadurai for M/s.M.B.Gopalan and Associates, learned counsel for 2nd respondent.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The first issue pertains to the 10% contributory negligence that was attributed against the claimant. The Tribunal on considering the



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facts and circumstances of the case has come to a categoric conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. After having come to such a conclusion, the Tribunal had attributed 10% contributory negligence on the ground that the claimant was not wearing a head gear. Non wearing of a helmet by itself cannot be construed as a contributory negligence unless the claimant has contributed to the negligence resulting in the accident. Therefore, the finding of the Tribunal by attributing 10% contributory negligence against the claimant is interfered and the same is hereby set-aside.

11. In the instant case, the accident had taken place in the year 2017. The Tribunal had adopted per percentage method and granted a sum of Rs.5,000/- per percentage, which is on the lower side and this Court is inclined to grant a sum of Rs.7,000/- per percentage.

12. The learned counsel for the appellant submitted that PW2 had assessed the disability at 38.27 % and whereas, the Tribunal went wrong in fixing the disability at 5%. In the considered view of this Court,



the claimant always had the opportunity to appear before the Medical board in order to assess the disability but the claimant had chosen to go to a private doctor and get a a disability certificate. In view of the same, this Court does not find any illegality in the order passed by the Tribunal in fixing 5% towards disability, after considering the nature of injury sustained by the claimant. Accordingly, the compensation under the head of disability is fixed at Rs.7,000 x 5 = Rs.35,000/-.

13. The claimant underwent treatment as an in patient for nearly 12 days. In view of the same, this Court is inclined to enhance the compensation under the head of pain and sufferings, attendar Charges, Transportation charges and Extra Nourishment to Rs.25,000/-, Rs.10,000/-, Rs.15,000/- and Rs.15,000/- respectively.

14. Insofar as the loss of income is concerned, this Court is inclined to fix a sum of Rs.20,000/- (10,000x 2 months).

15. The compensation that has been granted under the other heads are reasonable and it does not require the interference of this



16. In the light of the above discussion, this Court modifies the compensation in the following manner:-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Partial disability [Rs.7000/- x 5]	Rs.35,000/-
2.	Pain and sufferings	Rs. 25,000/-
3.	Loss of Income	Rs. 20,000/-
4.	Medical expenses	Rs.94,240/-
5.	Attendant charges	Rs.15,000/-
6.	Transportation	Rs.10,000/-
7.	Extra Nourishment	Rs.15,000/-
	Total	Rs. 2,14,240/-

17. The compensation awarded by the Tribunal at Rs.1,45,110/- is enhanced to Rs.2,14,240/-. The learned counsel for the insurance company submitted that the entire compensation amount has been deposited with interest. Therefore, the 2nd respondent Insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from



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the date of receipt of this judgment. On such deposit, the claimant is entitled to withdraw the same. Insofar as the enhanced compensation of Rs.69,130/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 186 days as was ordered by this Court in C.M.P.No.4669 of 2024, dated 18.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. It goes without saying that the insurance company will be entitled to pay and recover as directed by the Tribunal.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

16.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To, Motor Accident Claims Tribunal/ I Additional District Judge Court,
Namakkal.



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