



C.M.A. No. 2319 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No.2319 of 2021

K. Ganesan

... Appellant / Petitioner

Vs.

1. G. Elangovan

2. United India Insurance Co. Ltd.,
No.134, Greaves Road,
IV Floor, Anna Salai,
Chennai 0 600 006.

... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 07.08.2018 passed in M.A.C.T.O.P. No. 3939 of 2016 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : M/s. F. Terry Chella Raja

For R1 : Ex-parte

For R2 : M/s. R. Shree Vidhya



WEB COPY



C.M.A. No. 2319 of 2021

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant/appellant herein seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 3939 of 2016, dated 07.08.2018 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai for the injuries sustained by him in road accident, taken place on 31.03.2016 at 4:30 hours at Nallur to Kondaiyankuppam Kootu Salai. For the injuries sustained by him, the claimant has filed claim petition seeking compensation for a sum of Rs.9,00,000/- by invoking section 166 of the Motor Vehicles Act, 1988 against the respondents, who are the owner and insurer of the van bearing Registration No.TN-05-0189.

2. The first respondent, who is the owner of the offending van, has not contested the claim and remained ex-parte. The second respondent – insurance company has filed counter and disputed the manner in which the accident has taken place and injuries sustained by the claimant and also contended the compensation claimed under various heads is on the higher side. The Tribunal after considering the evidence placed on record has held



that the accident has taken place only due to the rash and negligence on the part of the first respondent's driver and fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimant. The Tribunal also quantified and granted compensation for a sum of Rs.1,17,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

3. Aggrieved over the award, the claimant has come forward with this appeal seeking enhancement of compensation. The respondents have not preferred any appeal against the award.

4. The learned counsel appearing for the claimant submitted that the Tribunal has not properly appreciated the injuries and the disability sustained by the claimant and awarded meagre compensation under the head disability and also the compensation awarded under various other heads is on the lower side and prays to enhance the compensation awarded by the Tribunal.

5. The learned counsel appearing for the second respondent –



insurance company submitted that based on the evidences placed on record, the Tribunal has awarded a just compensation and also restricted the appeal on the ground that the injuries sustained by the claimant is not grievous in nature and he was also treated conservatively, hence prays to confirm the award.

6. I have considered the submissions made on both sides and perused the materials available on record.

7. Ex.P.2 – Accident Register and Ex.P.3 – medical treatment records shows that the claimant has taken treatment at Melmaruvathur Adhiparasakthi Institute of Medical Science and Research on 04.04.2016 for the 1st Metacarpal and Proximal Phalanx 5th Metacarpal injuries sustained by him at the time of accident. Ex.P.8 – Disability certificate issued by the P.W.2 – Doctor shows that the fracture and injuries sustained by the claimant caused non-functional permanent disability to the extent of 15%. However, the Tribunal after considering the nature of injuries, disability percentage and evidence of P.W.2 reduced the disability to the extent of 10% stating that the P.W.2 – Doctor has not treated the claimant



and the treatment undergone by the claimant is also only conservative treatment.

8. Tthis Court is of the view that reasons given by the Tribunal for fixing the disability is acceptable one and the disability fixed by the Tribunal is proper, however, the Tribunal has granted Rs.3,000/- per percentage of disability and awarded Rs.30,000/- under the head disability. This Court in *M. Chinnathambi vs. S. Deepa and another* [CDJ 2020 MHC 1013; 2020 (1) TNMAC 617], has awarded Rs.5,000/- per percentage of disability for the accident cases taken place from the year 2016 onwards, hence, considering the date of accident and also the age of the claimant herein, this Court is inclined to modify the award of Rs.3,000/- per percentage of disability by the Tribunal to Rs.5,000/- accordingly, the total compensation granted under the disability is modified to Rs.50,000/- (Rs.5,000/- x 10% of disability). Whereas the compensation awarded under other heads are concerned, the Tribunal has awarded a just compensation and the same is hereby confirmed.

9. Accordingly, the award passed by the Tribunal under various



heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Transportation and Nourishing food	10,000/-	10,000/-	Confirmed
2.	Attender charges	2,000/-	2,000/-	Confirmed
3.	Disability	30,000/-	50,000/-	Enhanced
4.	Loss of Earning	30,000/-	30,000/-	Confirmed
5.	Damages for pain, suffering and trauma	30,000/-	30,000/-	Confirmed
6.	Loss of Amenities	15,000/-	15,000/-	Confirmed
	Total Compensation	1,17,000/-	1,37,000/-	Enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,17,000/- is hereby enhanced to **Rs.1,37,000/- [Rupees One Lakh and Thirty Seven Thousand only]** together along with interest at the rate of **7.5% per annum** from the date of filing of Claim Petition till the date of realization, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to



C.M.A. No. 2319 of 2021

the credit of M.C.O.P.No.3939 of 2016 on the file of the IV Judge, Motor Accidents Claims Tribunal, IV Court of Small Causes, Chennai. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

07.02.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The IV Judge,
Motor Accident Claims Tribunal,
IV Court of Small Causes, Chennai.
2. The Section Officer,



WEB COPY

V.R.Section,
High Court, Chennai.



C.M.A. No. 2319 of 2021

K. RAJASEKAR, J.

stn

C.M.A. No. 2319 of 2021

07.02.2024