



Civil Miscellaneous Appeal No.2902 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2902 of 2022

Kadhirvel

S/o.Ponnusamy

... Appellant

Vs.

1.N.Karumbachalam

S/o.Nachimuthu

2.The New India Assurance Company Ltd.,

represented by its Manager,
Amman Complex, 1st Floor,
EVN Road, Erode - 630 011.

3.The New India Assurance Company Ltd.,

represented by its Manager,
Mayura Complex,
Mettur Main Road, Bhavani.

... Respondents

[Notice to R1 and R3 may be dispensed with for the
time being and separate petition is filed for the same]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and judgment made in M.C.O.P.No.827 of 2015 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani, dated 22.11.2018 and for enhancement of compensation.



For Appellant : Mr.C.Kulanthaivel
For Respondents : Mr.C.Ramesh Babu [R2]

JUDGMENT

This appeal has been filed by the appellant/claimant seeking for enhancement of compensation awarded by the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani, in M.C.O.P.No.827 of 2015, dated 22.11.2018.

2. The case of the appellant is that on 04.10.2015 at about 7.20 p.m., he was standing at the corner of the road along with his vehicle and at that time, the first respondent drove the car in a rash and negligent manner and dashed against the appellant. As a result, the appellant sustained grievous injuries and he was admitted at Komarapalayam Government Hospital. Thereafter, he was referred for better treatment and the appellant was taking treatment as an inpatient for nearly 15 days. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3. The Tribunal, on considering the facts and circumstances of the



case and on appreciation of 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 car. The Tribunal had fixed compensation under various heads in the following manner:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income due to 40% permanent disability	1,20,000/-
2.	Loss of income during treatment period	20,000/-
3.	Medical expenses	70,690/-
4.	Additional Nutrition	10,000/-
5.	Pain and Sufferings	20,000/-
6.	Transport expenses	10,000/-
	Total	2,50,690/-
	Less: 10% contributory negligence	25069/-
	Compensation payable	2,25,621/-

The appellant/claimant has filed this appeal seeking for enhancement of compensation.

4. Heard Mr.C.Kulanthaivel, learned counsel for appellant/claimant and Mr.C.Ramesh Babu, learned counsel for second respondent insurance company.

5. This Court has carefully considered the submissions made on



either side and the materials available on record.

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6. In the considered view of this Court, the compensation fixed by the Tribunal under two of the heads requires enhancement/modification. That apart, 10% contributory negligence that was attributed against the appellant is also liable to be interfered with by this Court.

7. The appellant had suffered the following injuries:

- (a) Pain, Swelling and Deformity in left thigh
X-ray left femur, fracture shaft of left femur.
- (b) Pain and swelling in left leg.
X-ray left ankle, fracture fibula left.
- (c) Abrasion 2 x 3 cm, 1 x 1 cm laceration right leg.
- (d) Abrasion 3 x 3 cm, 2 x 3 cm right knee.

8. The Medical Board, on assessment of the above injuries, came to a conclusion that the appellant has suffered 40% permanent disability. The Tribunal has chosen to adopt the percentage method and has calculated per percentage of disability at the rate of Rs.3,000/-. The accident had taken place in the year 2015. Hence, considering the increase in the cost of living, this Court is inclined to enhance the per



percentage of disability at the rate of Rs.5,000/-. Accordingly, the compensation awarded under the head 'disability' is enhanced to Rs.2,00,000/- [5000 * 40].

9. The appellant had undergone treatment as an inpatient for nearly 15 days. However, no compensation has been granted under the head 'attender charges'. This Court is inclined to award a sum of Rs.10,000/- towards attender charges.

10. The Tribunal has deducted 10% from the total compensation towards contributory negligence. This was done on the ground that the appellant was under the influence of alcohol.

11. The Tribunal came to a conclusion that the entire incident had taken place only due to the rash and negligent driving of the car by the first respondent. The appellant was standing in the corner of the road along with his two wheeler. He was not driving the vehicle at the time of accident. Consumption of alcohol by itself is not an offence. It becomes an offence under Section 185 of the Motor Vehicles Act only when the



person drives a vehicle or attempts to drive a vehicle under the influence of alcohol. Even then, Section 185 (a) of the Motor Vehicles Act provides that the alcohol in the blood should exceed 30 mg per 100 ml in order to attract the offence. In the case in hand, the appellant was neither driving the vehicle nor was he attempting to drive the vehicle and he was only standing in the corner of the road with the vehicle. Apart from that, there is nothing to show that the alcohol in the blood was exceeding 30 mg per 100 ml. Under such circumstances, there is no question of attributing contributory negligence against the appellant. Hence, this Court is inclined to interfere with the 10% deduction made by the Tribunal towards contributory negligence.

12. In the light of the above discussion, the compensation awarded by the Tribunal is modified/enhanced as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income due to 40% permanent disability	2,00,000/-
2.	Loss of income during treatment period	20,000/-
3.	Medical expenses	70,690/-



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Sl.No.	Compensation awarded under the head	Amount (in Rs.)
4.	Additional Nutrition	10,000/-
5.	Pain and Sufferings	20,000/-
6.	Transport expenses	10,000/-
7.	Attender charges	10,000/-
	Total	3,40,690/-

13. The compensation awarded by the tribunal at Rs.2,25,621/- is enhanced to Rs.3,40,690/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.3,40,690/-, 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 the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,15,069/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 361 days as was ordered by this Court in C.M.P.No.4269 of 2021, dated 06.12.2022. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

N.ANAND VENKATESH, J.



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This Civil Miscellaneous Appeal is disposed of in the above terms.

No costs.

03.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal
cum IV Additional District Judge,
Erode District at Bhavani,

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