



C.M.A.No.431 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.No.431 of 2023

A.Sridhar (since died)

1.Thiripurasundari

2.Manikandan (Minor)

3.Kavinesh (Minor)

4.Shalini (Minor)

(Minor appellants 2 to 4 are represented by
their Mother and Next Friend Thiripurasundari,
1st appellant herein)

5.Chinnaponnu

.. Appellants

(Cause title accepted vide order of this Court
dated 11.01.2023 made in C.M.P.No.23150 of
2022 in C.M.A.SR.No.20879 of 2022)

Vs.

1.V.Venkatesan

(R1 remained exparte before the Tribunal.
Hence, notice to R1 is dispensed with)



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2.Bharti AXA General Insurance Company Limited,
Metro Plaza, 2nd Floor, No.162,
Anna Salai,
Chennai - 600 002.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the award dated 02.11.2019 made in M.A.C.T.O.P.No.1123 of 2017 on the file of the Motor Accident Claims Tribunal, (In the III Court of Small Causes, Chennai).

For Appellants : Mr.A.G.F.Terry Chella Raja
For R2 : Ms.A.Salomi

J U D G M E N T

The claimants not being satisfied with the quantum of compensation fixed by the Tribunal have filed the present appeal before this Court against the award of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, in M.C.O.P.No.1123 of 2017 dated 02.11.2019.

2.The original claimant in this case is the injured. He filed the claim petition on the ground that on 07.01.2017 he was riding a two wheeler and was proceeding at Kelambakkam - Vandalur road and at about 20.00



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hours when the two wheeler approached near Praveena Hospital, Kelambakkam, the offending vehicle was driven in a rash and negligent manner and as a result, it hit the two wheeler driven by the claimant and as a result, the claimant sustained RTA - Traumatic Brain Injury - Marshall Grade V.

3.The seriousness of the injury resulted in the claimant undergoing treatment in seven spells for a total period of one year and six months. The claimant was also in the Intensive Care Unit (ICU) and he was under ventilator for nearly 10 days during one phase of the treatment.

4.The discharge summary that has been marked as Ex.P5 shows that the claimant has also suffers seizures, CTCS involving all cubs, tongue bite. Ultimately when the claimant was assessed by the Medical Board, they found that the claimant suffers from memory disturbance due to traumatic brain injury and assessed permanent disability at 40%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

5.The Tribunal on considering the facts and circumstances of the



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case and on appreciation of the 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 offending vehicle. The Tribunal after having rendered such a finding, took into consideration the discharge summaries that were marked as Exs.P2 to P7 and fixed the total compensation payable at Rs.24,57,624/- (rounded off to Rs.24,57,630/-) under various heads as follows:

1.Pain and sufferings	-	Rs.1,20,000/-
2.Transport and Extra nourishment	-	Rs.1,00,000/-
3.Loss of Earning	-	Rs.13,23,000/-
4.Attender charges	-	Rs.23,400/-
5.Medical expenses	-	Rs.7,90,224/-
6.Damages to Clothes	-	Rs.1,000/-
7.Loss of amenities	-	Rs.1,00,000/-

		Rs.24,57,624/-

The same is rounded off to Rs.24,57,630/-

6.The above compensation was directed to be paid with interest at the rate of 7.5% per annum.

7.The Tribunal finally heard the claim petition on 31.10.2019 and



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by then, the claimant died on 29.10.2019. No one was aware of the demise of the claimant and therefore, the Tribunal proceeded to pass the award in favour of the claimant by award dated 02.11.2019. In view of the same, while filing this appeal, the legal representatives of the deceased claimant who are the wife, three minor children and the mother of the deceased filed this appeal seeking for enhancement of compensation. The appellants filed a petition to accept the cause title and the same was also allowed by this Court by order passed in C.M.P.No.23150 of 2022 in C.M.A.SR.No.20879 of 2022 dated 11.01.2023.

8. When an order is passed in favour of the claimant and on the date of the order the claimant is no more, the order is not vitiated and it cannot be construed as void-ab-initio. Useful reference can be made to the following judgments:

(i)ILR (Mad) Vol 33 Page 167 @ Page No.170

(ii)1981 SCC Online Mad 254 @ paragraph No.5

(iii)2003 SCC Online P & H 446 @ paragraph Nos.4, 5 & 11



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Therefore, the legal heirs of the claimant can certainly maintain the present appeal seeking for enhancement of compensation.

9.Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent.

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

11.This Court has also carefully gone through the award passed by the Tribunal.

12.The discharge summaries which were marked as Exs.P2 to P7 shows the prolonged treatment that was taken by the claimant for the serious head injury suffered by him. Each and every one of those discharge summaries talks about the various treatments that were given to the claimant. At one stage, the claimant was in Intensive Care Unit (ICU) for nearly 24 days and was under ventilator for 10 days. This only means that the claimant was almost in the clutches of death and he miraculously



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escaped. The fact remains that the claimant died nearly within two years from the date of accident and it is not difficult to come to a conclusion that the serious head injuries sustained by the claimant has resulted in his demise.

13.The Medical Board has assessed the permanent disability at 40%. The Tribunal taking into consideration the avocation of the claimant and also the nature of injuries sustained by him, fixed the permanent disability at 50% and also adopted the multiplier method.

14.In the considered view of this Court, the nature of injuries sustained by the claimant and the treatment underwent by him, will go to show that he has virtually lost his capacity to earn or can get any work and therefore, the percentage of permanent disability has to be necessarily increased in this case. This is more so, since the claimant also died ultimately. The permanent disability fixed by the Medical Board is only an indication and it will not tie the hands of the Court to fix the percentage depending upon the facts of the case.



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15.In the light of the above discussion, this Court is inclined to fix the percentage of permanent disability at 75%.

16.The Tribunal has fixed the monthly income of the claimant as Rs.10,500/-. The accident had taken place in the year 2017 and considering the cost of living and price index and also the avocation of the claimant, this Court is inclined to fix the notional monthly income at Rs.13,000/-. 40% can be added towards future prospects. Thus, the loss of earning capacity is calculated as follows:

$$\text{Rs.13,000/-} + 40\% \times 12 \times 15 \times 75\% = \text{Rs.24,57,000/-}$$

17.In so far as the compensation that has been fixed under other heads, this Court finds the same to be reasonable. Since, this Court has fixed a higher percentage towards permanent disability and also fixed notional monthly income of the claimant and a separate compensation has been given under the head of loss of amenities, the compensation that has been given under the head of pain and sufferings can be scrapped from the heads under which the compensation has been granted in this case.



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18.In the light of the above discussion, the award passed by the Tribunal is modified as follows:

1.Loss of earning capacity	-	Rs.24,57,000/-
2.Pain and sufferings	-	NIL
3.Transport and Extra nourishment	-	Rs.1,00,000/-
4.Attender charges	-	Rs.23,400/-
5.Medical expenses	-	Rs.7,90,224/-
6.Damages to Clothes	-	Rs.1,000/-
7.Loss of amenities	-	Rs.1,00,000/-

Rs.34,71,624/-

Rounded off to Rs.34,71,630/-

19.The compensation awarded by the Tribunal at Rs.24,57,630/- is hereby enhanced to Rs.34,71,630/-. 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 the date of receipt of this judgment. Insofar as the enhanced compensation amount is concerned, it shall go equally in favour of the



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three minor claimants, who are the appellants 2 to 4. The amount for the respective minors shall be deposited in a Fixed Deposit till they attain majority and the interest earned shall be utilized by the 1st appellant towards the welfare and up keep of the minor children. In so far as the enhanced compensation is concerned, the deficit Court fee if not paid shall be paid by the claimants.

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

12.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The III Judge,
Motor Accident Claims Tribunal,



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III Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

N.ANAND VENKATESH, J.

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