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C.M.A. No.1668 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1668 of 2021

Anandan

... Appellant / Petitioner

Vs.

1. E.Vajravelu

2. The Oriental Insurance Company Ltd.,
No.68, Vellal Panchiyappan Street,
Kanchipuram.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 24.09.2019 passed in M.C.O.P. No.251 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kancheepuram.

For Appellant	:	Mr. C. Prabakaran
For R1	:	Dispensed with
For R2	:	Mr. R. Sivakumar

JUDGMENT



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This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.251 of 2016, dated 24.09.2019 on the file of the Motor Accident Claims Tribunal, Additional District Court (FTC), Kancheepuram.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The brief facts leading to filing of this appeal is that while the claimant was travelling as pillion rider in a two wheeler bearing Registration No.TN 21 D 0622 along with rider Shanmugam on 24.02.2002 at about 6.30 a.m., on Ponnerikarai, opposite to Jayalalitha Nagar of Kancheepuram Taluk. Due to high sped, the rider of the two-wheeler lost control and the two-wheeler fell into the pit which resulted in causing instantaneous death to the rider of the two wheeler. The claimant also sustained grievous injuries. He was admitted into the hospital and after discharge, he has come forward with the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.2,00,000/-.



4. The Tribunal, after considering the evidences placed on record, has held that the claimant has sustained only simple injury hence awarded a sum of Rs.5,000/- along with interest at the rate of 7.5% per annum.

5. Aggrieved over the quantum of compensation, this Appeal has been filed by the claimant for enhancement of compensation. The Insurance Company has not filed any appeal since the compensation awarded by the Tribunal is less than the prescribed value permissible to be challenged.

6. The learned counsel for the claimant has submitted that the Tribunal has not properly appreciated the medical records and has not properly awarded compensation and also the compensation awarded is only a meagre sum. Hence prays to enhance the same.

7. Per Contra, the learned counsel for the Insurance Company has submitted that it is the admitted case of the claimant that 3 persons travelled in the two-wheeler and there was a violation of policy conditions



since the compensation awarded is less than the permissible limit for filing the appeal, they have not preferred the appeal. However, she has challenged the liability and stated that since the violation of policy condition, the claimant is not entitled to get compensation.

8. I have considered the rival submissions made on both sides and also perused the records.

9. It is true that the claimant himself has admitted that 3 persons travelled in the two-wheeler however, it is held by the Apex Court in ***Mohammed Siddique vs. National Insurance Company Ltd., [AIR 2020 SC 520 : AIR Online 2020 SC 29]***, since 3 persons travelled in the two-wheeler alone is sufficient to deny the claim of compensation unless there is an evidence to show that 3 persons travelled in the two-wheeler is a route cause for the accident. The rider of the two-wheeler has driven the vehicle in negligent manner and dropped the two-wheeler into the pit.

10. The Tribunal has also accepted that the rider of the two-



wheeler is responsible for the accident and there is no finding that since 3 persons have travelled, resulted in accident. Hence, the contention of the Insurance Company that the claimant is not entitled to get compensation from them could not be acceptable. While considering the quantum of compensation, the claimant has subjected himself for medical board examination and the Medical Board has assessed the disability as 5% and nowhere, the Medical Board has stated that the injuries sustained by the claimant is only a simple injury.

11. I have also gone through the Discharge Summary produced and which was marked as Ex.P5 wherein, it is stated that the claimant has sustained fracture of left forearm, resulted in fixing of diagnol compression plate and it is a case of fracture on the forearm which could not be considered as a simple injury. It is a grievous injury and the Medical Board has assessed the disability as 5% and awarding compensation only a sum of Rs.5,000/- is not proper. Considering the nature of injuries and date of accident, this Court re-works the compensation and accordingly a sum of Rs.10,000/- [2000 x 5] awarded under the head 'Disability'. He has also undergone in-patient treatment for a period of 16 days hence he is entitled to



get one month income i.e., a sum of Rs.7,000/- as a loss of income during treatment period. This Court is inclined to award a sum of Rs.5,000/- as loss of amenities and also a sum of Rs.15,000/- is awarded under the head Pain and sufferings and also a sum of Rs.1,000/- is awarded under the head Damages to clothes and also a sum of Rs.3,000/- is awarded under the head Extra Nourishment.

12. Accordingly, the Award passed by the Tribunal is 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.	Disability	Rs.5,000/-	Rs.10,000/-	Enhanced
2.	Loss of income during treatment period	---	Rs.7,000/-	Granted
3.	Pain and Sufferings	---	Rs.15,000/-	Granted
4.	Damages to clothes	---	Rs.1,000/-	Granted
5	Extra Nourishment	---	Rs.3,000/-	Granted
6	Medical Expenses	---	Rs.5,000/-	Granted
	Total Compensation	Rs.5,000/-	Rs.41,000/-	Enhanced by Rs.36,000/-



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13. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,000/- is hereby enhanced to Rs.41,000/- [Rupees Forty One Thousand only] along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount now 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 the credit of M.C.O.P.No.251 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District Court (FTC), Kancheepuram. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn, as per the apportionment fixed by the Tribunal. 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. In other aspects the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the



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present appeal.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. The Additional District Judge (FTC),
Motor Accident Claims Tribunal,
Kancheepuram.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

K. RAJASEKAR, J.

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