



Civil Miscellaneous Appeal No.553 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.553 of 2022

Vadivel

S/o.Kaliyappan

... Appellant

Vs.

1.E.R.Chandran

S/o.Rangasamy

2.The Universal Sompo General Insurance

Co. Ltd.,

Shop No.657, 3rd Floor, Tristal Towers,
Avinashi Road, Near Lakshmi Mill Junction,
P.N.Palayam, Coimbatore - 641 037.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.406 of 2018 dated 09.02.2021 on the file of Motor Accident Claims Tribunal, Special Subordinate Judge, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : No appearance [R1]
Ms.R.Sreevidhya [R2]



JUDGMENT

WEB COPY This appeal has been filed by the appellant/claimant seeking for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Special Subordinate Judge, Erode, in M.C.O.P.No.406 of 2018 dated 09.02.2021.

2. The case of the appellant is that he was riding a two-wheeler from Salem to Kovai NH-47 road. When the vehicle was approaching Chellampalayam Pirivu, a Scorpio Car driven in a rash and negligent manner by the first respondent, hit the two-wheeler of the appellant and as a result, the appellant was thrown out of the two-wheeler and he sustained grievous injuries. Due to the accident, the appellant sustained comminuted fracture shaft of right femur and he took treatment as an inpatient for nearly 16 days. It is under these circumstances, a claim petition came to be filed before the Tribunal.

3. The Tribunal, 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 first respondent. After having



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rendered such finding, the Tribunal proceeded to award compensation under various heads and the total compensation of Rs.2,84,000/- was awarded in the following manner:

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Earnings	Nil
2.	Permanent Disability & loss of earning power	90,000/-
3.	Medical expenses	69,000/-
4.	Pain and sufferings	60,000/-
5.	Future Medical Expenses	30,000/-
6.	Transport to Hospital	12,000/-
7.	Extra nourishment	10,000/-
8.	Attender charges	10,000/-
9.	Damages to clothes and articles	3,000/-
	Total	2,84,000/-

The above compensation was directed to be paid with interest at 9% p.a.

4. The claimant, not being satisfied with the compensation awarded by the Tribunal, has approached this Court seeking for enhancement of compensation.

5. Heard Mr.T.S.Arthanareeswaran, learned counsel for appellant/claimant and Ms.R.Sreevidhya, learned counsel for second



respondent insurance company.

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

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

8. In the considered view of this Court, there are two heads where the compensation awarded by the Tribunal requires interference of this Court viz., 'loss of earnings' and 'permanent disability and loss of earning power'. The compensation that has been awarded under the other heads are reasonable and does not require the interference of this Court.

9. Insofar as loss of earnings is concerned, the Tribunal had not granted any compensation to the appellant/claimant. The Tribunal has come to a conclusion that there are no valid documents produced by the appellant/claimant to establish that he lost his earnings during the relevant point of time. In the instant case, the documents that were



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marked by the appellant/claimant shows that the appellant/claimant was a boiler operator and he was working in SMIS Industries, which is evident from Exs.P9 to P12. It is also seen that the appellant/claimant was drawing a salary on an average of Rs.20,000/- p.m. The appellant/claimant was an inpatient for nearly 16 days. He had also suffered comminuted fracture shaft of right femur. Therefore, the appellant/claimant must have lost the earnings for at least for a period of three months.

10. Considering the documents that have been marked before the Tribunal, this Court is inclined to fix the monthly income of the appellant/claimant at Rs.20,400/- and considering the injuries sustained by him, he would have been out of job for at least three months. Therefore, compensation of Rs.61,200/- $[20400 \times 3]$ can be awarded under the head loss of earnings.

11. Insofar as the loss of earning power is concerned, the accident had taken place in the year 2018 and the appellant had suffered 18%



disability. The Tribunal has fixed Rs.5,000/- per percentage of disability.

Considering the judgment of the Division Bench of this Court in C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others], this Court is inclined to award Rs.7,000/- per percentage of disability. Thus, the total compensation under this head works out to Rs.1,26,000/- [7000 * 18].

12. 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.	Permanent Disability & loss of earning power	1,26,000/-
2.	Medical expenses	69,000/-
3.	Loss of Earnings	61,200/-
4.	Pain and sufferings	60,000/-
5.	Future Medical Expenses	30,000/-
6.	Transport to Hospital	12,000/-
7.	Extra nourishment	10,000/-
8.	Attender charges	10,000/-
9.	Damages to clothes and articles	3,000/-
	Total	3,81,200/-

13. The Tribunal has awarded interest at 9% p.a. The same is hereby reduced to 7.5% p.a.



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14. The compensation awarded by the Tribunal at Rs.2,84,000/- is enhanced to Rs.3,81,200/-. The second 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 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.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

08.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH, J.

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WEB COPY To

The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Erode.

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