



C.M.A.No.835 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.835 of 2021

S.Saravanan

..Appellant

Vs.

1. K.Siva
2. ICICI Lombard General
Insurance Company Limited,
Swarnambikai Plaza,
S.F.No.6/5-Plot No.7,
Ward-C, Omalur Main Road,
New Bus Stand, Salem – 636 009.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.12.2019 in M.C.O.P.No.1439 of 2016 on the file of Motor Accidents Claims Tribunal / Special Subordinate Court No.2, Salem.

For Appellant : Mr.C.Thangaraju for
Mr.K.Chandramohan

For Respondents : Mr.K.Poomalai for R2
: No Appearance for R1



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JUDGEMENT

Challenging the judgment and decree dated 13.12.2019 made in M.C.O.P.No.1439 of 2016 on the file of the Motor Accidents Claims Tribunal / Special Subordinate Court No.2, Salem., the claimant is before this Court.

2. Mr.K.Poomalai, learned counsel takes notice on behalf of the 2nd respondent.

3. Though the name of the first respondent is printed in the cause list, no one appeared on his behalf. Considering the period of pendency of the above appeal, the same is taken up for final disposal based on the materials available on records.

4. It is the case of the appellant/claimant that, on 10.04.2016 at about 8.30 p.m, when the petitioner was travelling as a pillion rider in the motorcycle bearing Regn.No.TN-37-CP-6384 belonging to the first respondent, the first respondent had driven the vehicle in a rash and negligent manner and had hit



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the central median, due to which the claimant sustained grievous injuries all over his body. Thereby, the appellant filed a claim petition seeking compensation of Rs.25,00,000/-.

5. Before the tribunal, the claimant examined himself as P.W.1 and P.W.2, Doctor and marked exhibits P.1 to P.10 and on the side of respondents two witnesses viz R.W.1 and R.W.2 were examined and Exhibit R1 was marked and Medical Bills were marked as court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence though came to a conclusion that the accident had taken place solely due to the rash and negligent driving of the 1st respondent, however, awarded a meagre compensation of Rs.3,40,293/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come up with this appeal seeking enhancement of compensation.

6. Learned counsel appearing for the appellant submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving of the 1st respondent, due to which, the appellant sustained grievous injuries all



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over his body. Though the individual Doctor assessed a disability of the claimant at 38%, however, the Tribunal had taken only 22% for the disability suffered by the claimant which is *per se* unsustainable. Moreso, the accident is of the year 2016, the tribunal had taken only a sum of Rs.3,000/- per percentage instead of Rs.6,000/-, which is not sustainable and the compensation awarded under the other heads are also on lower side and the same has to necessarily be enhanced. Accordingly, he prayed for appropriate orders.

7. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The factum and manner of the accident is not disputed by the parties



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and the claimant has not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same. The major grievances of the Appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the accident is of the year 2016, however, the Tribunal had taken had erroneously taken a sum of Rs.3,000/- per percentage of disability. However, as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.6,000/- per percentage of disability. Hence, this Court is inclined to fix a sum of Rs.6,000/- per percentage of disability. On a perusal of Ex.P.9, which is the disability certificate issued by the Doctor, P.W.2, it reveals that the appellant suffered disability of 38%. It is to be pointed out that the percentage of disability varies from doctor to doctor. Hence, considering the deposition made by the PW2, Doctor who examined the appellant/claimant, the Ex.P.9, the Disability certificate and also taking into account the nature of injuries suffered by the appellant, the tribunal had fixed the disability sustained by the appellant at the rate of 22% in which this Court does not finds any fault with. Therefore, the amount under the head Disability stands enhanced to a sum of Rs.1,32,000/- (22% x Rs.6,000/- = Rs.1,32,000/-).



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10. A sum of Rs.27,000/- has been granted under the head “pain and suffering” which is on the lower side and the same is enhanced to a sum of Rs.60,000/-. Insofar as the compensation awarded under other heads are concerned, they are just and reasonable and the same does not require any interference.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	66,000/-	1,32,000/-
Pain and sufferings	27,000/-	60,000/-
Loss of amenities	27,000/-	27,000/-
Medical Bills	1,24,293/-	1,24,293/-
Future medical expenses	20,000/-	20,000/-
Loss of income during treatment period (7,500 x 6)	45,000/-	45,000/-
Transportation	10,000/-	10,000/-
Extra nourishment	15,000/-	15,000/-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Attender charges	5,000/-	5,000/-
Damages to clothes	1,000/-	1,000/-
Total	3,40,293/-	4,39,293/-

12. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from Rs.3,40,293/- to **Rs.4,39,293/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.1439 of 2016 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the Appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. 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. Motor Accidents Claims Tribunal /
Special Subordinate Court No.2, Salem.
2. The Section Officer,
V.R. Section, High Court, Madras.

M.DHANDAPANI, J.



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