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C.M.A.No.1689 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1689 of 2024

Dhayalan

... Appellant

.Vs.

1.Shabana

2.ICICI Lombard General Insurance Company Limited,
Sigma Towers, 1st Floor, 29-35,
Narayanasamy Layout,
Coimbatore - 641 037.

... Respondents

(No relief sought against the first respondent
hence notice may be dispensed with)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 24.08.2023 in M.C.O.P.920 of 2020 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Mr.M.Sivakumar

For R2 : Ms.A.Salomi



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JUDGMENT

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The appellant is the claimant in M.C.O.P.920 of 2020 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Coimbatore. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.29,00,000/- for the injuries sustained by him in a road accident that took place on 22.09.2020.

2. The brief case of the claimant is as follows:

On 22.09.2020, the claimant was riding his two wheeler bearing Registration Number TN-99-A-6886 on Pollachi Main Road and at about 8.00 a.m., a two wheeler bearing Registration Number TN-99-P-6250 hit the two wheeler driven by the claimant, as a result of which, he fell down and sustained injuries all over his body. He was immediately rushed to Sree Abirami Hospital, Coimbatore, where he was treated as an inpatient for 11 days.

3. According to the claimant, the rash and negligent riding of the rider of the two wheeler bearing Registration Number TN-99-P-6250 belonging to the first respondent was the cause of the accident and that



since the said two wheeler was insured with the second respondent, the ICICI Lombard General Insurance Company Limited, the owner of the two wheeler (first respondent) and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the two wheeler remained absent and was set *ex parte*. The second respondent, the ICICI Lombard General Insurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The Tribunal after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler bearing Registration Number TN-99-P-6250 and held that the owner of the two wheeler and the insurer are jointly and severally liable to pay compensation of Rs.9,88,700/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realization, vide its orders dated 24.08.2023.

6. Aggrieved over the quantum of compensation awarded by the



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Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

7. Heard Mr.M.Sivakumar, learned counsel for the appellant and Ms.A.Salomi, learned counsel for the second respondent.

8. Mr.M.Sivakumar, learned counsel for the appellant contended that the claimant sustained head injury and was hospitalized for about 11 days. It is also his contention that when the Medical Board attached to Government Hospital, Coimbatore, assessed the partial permanent disability of the claimant as 61% the Tribunal has awarded a meagre amount of Rs.9,88,700/- towards compensation. He therefore prayed for enhancement of compensation.

9. *Per contra*, Ms.A.Salomi, learned counsel for the second respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

10. A perusal of the wound certificate (Ex.P11) shows that the



claimant had sustained the following injuries :

Local Examination

1. Head injury+

2. Right foot abrasion+

Chest X-ray frontal view: Essentially normal study.

CT Brain (Plain) report dated 22.09.2020

Findings :

Intracranial hemorrhage with perilesional edema is noted in left basal ganglia measuring 4.7 x 3.2 x 2.6 cm (APXTRXSI), causing effacement of left lateral ventricle, adjacent cerebral sulci, fissures and adjacent cisternal spaces.

There is also hemorrhage seen in left lateral ventricle, 3rd and 4th ventricle.

No evidence of significant midline shift."

11. The Medical Board attached to Government Hospital, Coimbatore, had assessed the partial permanent disability of the claimant as 61%. The Tribunal has awarded Rs.5,000/- per percentage of disability since there is no functional disability. The disability certificate also does not speak about functional disability. The age of the claimant was 55 years and the accident took place in the year 2020. Considering the same, awarding Rs.8,000/- per percentage of disability would meet the ends of justice.



Thus, a sum of Rs.4,88,000/- is awarded towards partial permanent disability.

12. The Tribunal had awarded a exorbitant amounts for pain and sufferings, extra nourishment, attender's charges and loss of amenities. In the opinion of this Court, these amounts have to be scaled down. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Disability (Rs.8,000/- x 61 = 4,88,000)	3,05,000/-	4,88,000/-
2.	Transportation charges	10,000/-	10,000/-
3.	Extra nourishment	20,000/-	10,000/-
4.	Attender's charges	15,000/-	10,000/-
5.	Damage to clothes	5,000/-	1,000/-
6.	Medical bills	4,33,700/-	4,33,700/-
7.	Pain and sufferings	1,00,000/-	50,000/-
8.	Loss of earnings	50,000/-	50,000/-
9.	Loss of amenities	50,000/-	10,000/-
TOTAL		Rs.9,88,700/-	Rs.10,62,700/-



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.9,88,700/- to Rs.10,62,700/- which would carry interest at the rate of 7.5% per annum.

14. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.9,88,700/- to Rs.10,62,700/-.
- iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- iv. The first respondent and the second respondent, the ICICI Lombard



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General Insurance Company Limited, are directed to deposit the enhanced compensation amount i.e., Rs.10,62,700/- (less the amount already deposited) jointly and severally, together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.920 of 2020 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore, within a period of four weeks from the date of receipt of a copy of this order.

- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.
- vi. The appellant / claimant is not entitled to claim interest for the period of delay of 74 days in filing this appeal.

10.09.2024

Index : Yes/No
Speaking / Non-speaking order
mtl



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1. The Motor Accidents Claims Tribunal,
Special Sub Court, Coimbatore.
2. Reliance General Insurance Company Limited,
No.6, 4th Floor, Haddows Road,
Nungambakkam, Chennai - 600 006.
3. The Section Officer, VR Section, Madras High Court, Chennai.

R. HEMALATHA, J.



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