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C.M.A.No.2016 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2024

CORAM:

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

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1. D.Kamal (Died)
2. C.Rajeshwari
3. K.S.Sekarapaandiyan ...Appellants

(2nd and 3rd Appellants brought on record as LR's of the deceased sole appellant, vide common order dated 03.12.2024 made in CMP.Nos.21204, 21207 & 21210 of 2024 in CMA.No.2016 of 2021.)

Vs.

1. M.Arumugam
2. Cholamandalam MS General Insurance Company,
'Dare House', 2nd Floor,
No.2, NSC Bose Road, Chennai – 600 001. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking to allow the appeal and to enhance the compensation awarded in judgment and decree dated 21.10.2019 made in MCOP.No.7828 of 2016 on the file of the Special Court II (Motor Accidents Claims Tribunal), Chennai.



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For Appellants : Mr.N.M.Muthurajan

For Respondents : Mrs.R.Sreevidhya, for R2
: Notice Dispensed with, for R1

JUDGEMENT

Challenging the judgment and decree dated 21.10.2019 made in MCOP.No.7828 of 2016 on the file of the Special Court II (Motor Accidents Claims Tribunal), Chennai, the appellants are before this Court.

2. It is the case of the claimant that, on 23.09.2016 at about 20.45 hours, when the claimant, since deceased was proceeding from Arcot to Arni in the motorcycle bearing Regn.No.TN-25-W-5718, a lorry bearing Regn.No.TN-25-AP-2277 insured with the 2nd respondent, owned and driven by the 1st respondent in a rash and negligent manner came in the opposite direction and dashed against the motorcycle driven by the claimant, due to which he sustained grievous injuries and got admitted in the hospital. Thereby, the claimant filed a claim petition seeking compensation of Rs.30,00,000/-. Before the tribunal, the claimant examined himself as P.W.1 and marked exhibits P.1



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to P.18 and on the side of respondents no documents were marked and no witness was examined and the Disability certificate was 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 on the part of the 1st respondent, however, awarded a meagre compensation of Rs.7,94,600/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the appellants have come up with this appeal seeking enhancement of compensation.

3. Learned counsel appearing for the appellants submitted that admittedly, the above said accident occurred solely due to the rash and negligent driving on the part of the 1st respondent, due to which, the claimant, since deceased sustained grievous injuries and he was not able to continue his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Further, the Medical board also assessed the disability sustained by the claimant as permanent disability of 40%, however,



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the tribunal, without assigning any reason, reduced the same to 35% permanent disability and though the accident is of the year 2016, the tribunal had taken only a sum of Rs.3,000/- per percentage of disability which is very meagre. Learned counsel further submitted that, during the pendency of this appeal, the claimant, who was the sole breadwinner passed away and the legal heirs/dependents of the deceased claimant were impleaded as the 2nd and 3rd appellants. Further, the compensation awarded under other heads are also on the lower side, which necessarily has to be enhanced. Accordingly, he prayed for appropriate orders.

4. 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.

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



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

Therefore, this Court is not entering into the said aspect. The major grievances of the Appellants is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellants 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. In this regard, this Court perused Ex.C.1, which is the disability certificate issued by the Medical Board and the same reveals that the claimant suffered permanent disability of 40%, however, the tribunal, reduced the same to 35%, which is not based on any material and by erroneously adopting a sum of Rs.3,000/- per percentage of disability, the tribunal awarded a sum of Rs.1,05,000/- alone. 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. Further, when the Medical board, which consists of experts in the field, after examining the claimant, held that the claimant suffered 40% permanent disability, without assigning any reason, reducing the same to 35% is not sustainable. Hence, this Court fixes the



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disability suffered by claimant as 40% and is inclined to fix a sum of Rs.6,000/- per percentage of disability. Therefore, the amount under the head Disability stands enhanced to a sum of Rs.2,40,000/- (40% x Rs.6,000/- = Rs.2,40,000/-).

7. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation awarded under other heads are just and reasonable and the same does not requires interference of this Court.

8. 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	1,05,000/-	2,40,000/-
Pain and sufferings	35,000/-	35,000/-
Transportation expenses	13,000/-	13,000/-
Nutritious expenses	20,000/-	20,000/-
Damages to clothes	1,000/-	1,000/-



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Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Attender charges	13,000/-	13,000/-
Loss of income	65,000/-	65,000/-
Loss of livelihood	15,000/-	15,000/-
Medical Expenses	5,17,543/-	5,17,543/-
Loss of Marital life	10,000/-	10,000/-
Total	7,94,543/-	9,29,543/-

9. Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation amount from **Rs.7,94,543/-** to **Rs.9,29,543/-**. The 2nd respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.7828 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. In the above enhanced compensation, the 2nd appellant is entitled to a sum of Rs.5,29,543/- and the 3rd appellant is entitled to a sum of Rs.4,00,000/- with proportionate interest and costs. On such deposit being made, the Tribunal is directed to transfer the said



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amount directly to the bank account of the Appellants 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 appellants. It is underscored that the appellants are not entitled to any interest for the default period, if any. There shall be no order as to costs in the present appeal.

11.12.2024

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

1. The Special Court II (Motor Accidents Claims Tribunal),
Chennai.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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