



C.M.A.No.2149 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 02.02.2024	Pronounced on 08.02.2024
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2149 of 2021

Ramachandran

...Appellant

Vs.

1.Iyyappan
2.The Divisional Manager,
Reliance General Insurance Company Limited,
Rai's Towers,
Plot No.2054, 2nd Avenue,
2nd Floor, Anna Nagar,
Chennai - 600 040.

...Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 18.02.2020 made in M.A.C.T.O.P.No.1217 of 2017 on the file of the Motor Accident Claims Tribunal [Special Sub Judge, Tiruvannamalai].

For Appellant	: Mrs.M.Malar
For R1	: Died
For R2	: Mr.P.Suresh Srinivasan



C.M.A.No.2149 of 2021

WEB COPY

J U D G M E N T

The claimant is the appellant herein seeking enhancement of compensation.

2. For the sake of convenience, the parties are referred to as per their rank in the claim petition.

3. The date of the accident and the manner of the accident, involvement of the vehicle and the said vehicle being duly insured with the second respondent and the driver of the first respondent are not in dispute.

4. The claim petitioner filed petition seeking compensation for the injuries sustained in the road transport accident happened on 17.01.2017.

5. Before the Tribunal, the Insurance Company filed a counter specifically denying the manner of the accident and also stated that the driver of the vehicle does not have valid driving license and the injured/claim petitioner has invited the accident.

6. During the trial, the injured/claim petitioner was examined as P.W.1 and marked Exs.P1 to P10 on his side. On behalf of the second respondent- Insurance Company, Assistant from the R.T.O, Villupuram is examined as R.W.1. The driver of the offending vehicle is examined as R.W.2 and



C.M.A.No.2149 of 2021

Accountant from the Veems Pondicherry Medical College is examined as R.W.3 and Law Officer of the Insurance Company is examined as R.W.4 and Exs.R1 to R11 were marked. Wound Certificate issued by the Medical Board is marked as Ex.C1.

7. The trial Court has rendered a finding that the accident has taken place due to the contributory negligence of the rider of the both the two wheeler. Accordingly fixed contributory negligence at 50% each and awarded the compensation of Rs.3,47,463/-.

8. Heard the learned counsel appearing for the appellant and the respondents.

9. It is seen from the evidence of P.W.1 who is the injured witness that the accident has taken place due to the rash and negligence driving of the driver of the first respondent vehicle.

10. On perusal of Ex.R1-F.I.R, I find that the F.I.R was registered at the instance of R.W.2-Iyappan wherein he has stated that the two wheeler came in opposite direction namely the claim petitioner came in rash and negligence manner and dashed against him.

11. On perusal of the evidence of P.W.1 and the evidence of R.W.1, it is



C.M.A.No.2149 of 2021

seen that the charge sheet has been filed against the claim petitioner. The Tribunal on consideration to the answer elicited in the cross examination of P.W.1 has categorically held that the claim petitioner / injured has contributed negligence and fixed negligence @ 50% each on both the rider of the two wheelers.

12. On re-appreciation of evidence of P.W.1 and R.W.1 coupled with the answer elicited in the cross-examination of P.W.1, I find that the said finding rendered by the Tribunal is well founded and well merited which does not require any interference at the appellate stage. Accordingly, the said finding is hereby confirmed.

13. On the point of quantum of compensation, I find that the injured has initially taken treatment from 17.01.2017 to 02.02.2017 as could be seen from Ex.P3 - discharge summary and again Ex.P4 discharge summary second spell of treatment was between 11.03.2017 and 04.04.2017 and third round of treatment as could be seen from Ex.P5 between 09.03.2018 and 16.03.2018 thereby the injured was treated as in-patient for 47 days. Furthermore, the Medical Board has issued medical certificate Ex.C1 which reads as follows:-

Injuries	: Posyt traumatic sequelae right lowerlimb
Nature	: Grievous



C.M.A.No.2149 of 2021

Disability percentage is about 40% .

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and accordingly, the Trial Court fixed permanent disability of the claimant at 40%. The accident is of the year 2017 and hence a sum of Rs.5000/- is awarded per percentage of disability. Accordingly, Rs.2,00,000/- is awarded towards 'permanent disability'.

14. Taking into consideration the period of treatment as in-patient in hospital and in the interest of justice, the amount awarded by the Tribunal at Rs.5,000/- for 'attender charges' is hereby enhanced to Rs.10,000/-.

15. Furthermore, considering the nature of injuries, the compensation awarded by the Tribunal towards 'Extra Nourishment', 'Transportation' and 'pain and sufferings' are hereby enhanced to Rs.30,000/-, Rs.10,000/- and Rs.60,000/- respectively. The compensation awarded by the Tribunal at Rs.25,000/- towards 'loss of amenities', Rs.1,12,963/- towards 'medical expenses' are intact and hence the same are confirmed. Furthermore, the appellant/claimant is entitled to a sum of Rs.32,500/- (Rs.6500 x 5) towards 'loss of income' for five months @ Rs.6500/- per month.



C.M.A.No.2149 of 2021

WEB COPY

16. The break-up details of the compensation is as under :

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Disability [40x5000]	Rs.1,20,000/-	Rs.2,00,000/-
2.	Pain and Sufferings	Rs. 40,000/-	Rs. 60,000/-
3.	Loss of amenities	Rs. 25,000/-	Rs. 25,000/-
4.	Extra nourishment and damages	Rs. 20,000/-	Rs. 30,000/-
5.	Attender charges	Rs. 5,000/-	Rs. 10,000/-
6.	Medical Expenses	Rs. 1,12,963/-	Rs.1,12,963/-
7.	Transport Expenses	Rs. 5,000/-	Rs. 10,000/-
8.	Loss of income for 4 months	Rs. 19,500/-	Rs. 32,500/-
	Total	Rs. 3,47,463/-	Rs. 4,80,463/-
	Less: Contributory negligence @ 50% fixed on the claimant	Rs.1,73,731.50/-	Rs. 2,40,231.50/-
	Net compensation payable	Rs.1,73,731.50/-	Rs. 2,40,231.50/-

In total, the claim Petitioner is entitled to a sum of Rs.2,40,231/- (**Rupees Two lakhs forty thousand two hundred and thirty one and fifty paise only**).



C.M.A.No.2149 of 2021

WEB COPY

17. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.1,73,731.50/- to 2,40,231.50/-** to the extent indicated above, along with 7.5% interest per annum. No costs.

(ii) the 2nd Respondent/National Insurance Company Limited is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

08.02.2024



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C.M.A.No.2149 of 2021

Index : Yes/No
Internet : Yes/No
Neutral Citation: Yes/No
Speaking Order: Yes/no

To

1. The Motor Accident Claims Tribunal
Special Sub Judge, Tiruvannamalai
2. The Section Officer,
V.R.Section, High Court of Madras, Chennai.



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C.M.A.No.2149 of 2021

RMT.TEEKAA RAMAN.J.

nvi

Judgment made in
C.M.A.No.2149 of 2021

Dated:08.02.2024