



Civil Miscellaneous Appeal No.1071 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1071 of 2024

R.Karunamurthy represented by his daughter
and next friend K.Umarani
Residing at No.4,
3rd cross street, Krishnapuram,
Nandhivaram, Guduvancherry – 603 202
(Amended as per order passed in MP No.2/2022
dated 20.09.2022)

... Appellant

Vs.

1. E.Ravi

2. United India Insurance Co Ltd.,
Motor third party claims hub
Silingi Building, 4th Floor,
No.132 Greaves Road,
Chennai 600 006

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.466 of 2016 dated 21.09.2023, on the file of the Motor Accident Claims Tribunal (in the court of the Special Judge II) Court of Small causes, Chennai.



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Civil Miscellaneous Appeal No.1071 of 2024

For Appellant : Mr.K.Balaji

For Respondents : M/s.R.Rathna Thara for R2

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed this appeal challenging the award passed by Motor Accident Claims Tribunal (in the court of the Special Judge II) Court of Small causes, Chennai in M.C.O.P.No.466 of 2016 dated 21.09.2023.

2. The case of the claimant is that on 03.11.2015, he was riding the two wheeler at Tambaram to Chengalpattu road and at about 21.30 hours, the offending vehicle which was a car was driven in a rash and negligent manner and it dashed on the two wheeler. The claimant was thrown out of the vehicle and he sustained Lateral tibial condyle left knee and L/3, M/3, displaced left clavicle. The medical board assessed the disability at 35%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.



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3. The Tribunal on 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 driver of the offending vehicle.

4. Having rendered such a finding, the Tribunal attributed 20% contributory negligence on the claimant on the ground that he was not in possession of a valid driving license, he was not wearing helmet at the time of the accident and he was also a differently abled person, who was not capable of hearing or speaking. Hence, 80% liability was saddled on the respondent.

5. The Tribunal thereafter proceeded to fix the total compensation at Rs.2,42,500/- under various heads as follows :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Partial disability	Rs.1,40,000/-
2.	Pain and sufferings	Rs. 30,000/-
3.	Loss of Income	Rs.24,000/-
4.	Medical expenses	Rs.13,500/-
5.	Attendant charges	Rs.10,000/-



Sl. No.	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
6.	Transportation	Rs. 5,000/-
7.	Loss of Amenities	Rs. 10,000/-
8.	Extra nourishment	Rs.10,000/-
	Total	Rs.2,41,500/-

Out of the above compensation, Rs.1,94,000/- was directed to be paid by the Insurance company with interest at the rate of 7.5% per annum.

6. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

7. Heard Mr.K.Balaji, learned counsel for appellant/claimant and M/s.R.Rathna Thara, learned counsel for 2nd respondent.

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

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



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10. The 1st issue is with regard to 20% contributory negligence that was attributed against the claimant. There is no dispute with regard to the fact that the claimant was a differently abled person and was incapable of hearing and speaking. That is the reason why the claimant was initially represented by his father and later, he is represented through his daughter. Apart from that, the claimant was also not having a valid driving license and he was not wearing helmet at the time of the accident. Considering the manner in which the accident had taken place in this case, the physical disability suffered by the claimant has certainly contributed to the accident. Therefore, this Court is inclined to fix 10% towards contributory negligence.

11. Insofar as the issue of compensation is concerned, the disability was assessed at 35%. The accident had taken place in the year 2015. This Court is therefore inclined to fix a sum of Rs.5,000/- per percentage. Thus, the compensation under the head of disability is calculated at Rs.1,75,000/- (Rs.5,000 x 35).



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12. The claimant in this case had taken treatment as an in patient for nearly 21 days and had also undergone two operations. In view of the same, this Court is inclined to enhance the compensation under the head of pain and sufferings, Attendar Charges, Transportation charges and Extra Nourishment to Rs.50,000/-, Rs.15,000/-, Rs.10,000/- and Rs.20,000/- respectively.

13. The claimant was working as a Tailor in a private company and to substantiate the same, Ex.P3 Salary Slip was also marked. Considering the nature of injury sustained by the claimant, he would not have been able to continue with his work for atleast five months. Therefore, this Court is inclined to fix the notional monthly income at Rs.10,000/- per month. Accordingly, the compensation under the head of loss of income is enhanced to Rs.50,000/- (Rs.10,000/- x 5 months).

14. The compensation that has been granted under the other heads are reasonable and it does not require the interference of this Court.

15. 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.	Partial disability	Rs.1,75,000/-
2.	Pain and sufferings	Rs. 50,000/-
3.	Loss of Income	Rs.50,000/-
4.	Medical expenses	Rs.13,500/-
5.	Attendant charges	Rs.15,000/-
6.	Transportation	Rs. 10,000/-
7.	Loss of Amenities	Rs. 10,000/-
8.	Extra nourishment	Rs.20,000/-
	Total	Rs.3,43,500/-
	- 10% contributory negligence	Rs. 34,350/-
	Total	Rs.3,09,150/-

16. The compensation awarded by the Tribunal at Rs.2,42,500/- is enhanced to Rs.3,09,150/-. The 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.



Civil Miscellaneous Appeal No.1071 of 2024

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In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

18.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To, Motor Accident Claims Tribunal (in the court of the Special Judge II)
Court of Small causes, Chennai.

N.ANAND VENKATESH.,J

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Civil Miscellaneous Appeal No.1071 of 2024

Civil Miscellaneous Appeal No.1071 of 2024

18.07.2024