



WEB COPY



C.M.A.No.3137 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3137 of 2024

J.James

S/o.K.Joseph

... Appellant / Petitioner

Vs.

1. S.Palanivel

S/o.Shanmugam

2. ICICI Lombard General Insurance Company Limited,

Arihant Plaza, First Street,

No.84/85, Wall Tax Road,

Chennai - 600 003.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.09.2019 made in M.A.C.T.O.P.No.3188 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court-II, Motor Claims Petitions Court of Small Causes, Chennai.

For Appellant : Ms.A.Subadra

For Respondents : Mr.A.Salomi for R2
R1 - remained exparte



C.M.A.No.3137 of 2024

WEB COPY

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.A.C.T.O.P.No.3188 of 2016, the appellant has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. On 18.07.2015 at about 10.30 a.m., when the claimant was riding a motor cycle bearing Registration No.TN-02-AX-3018, another motorcycle bearing Registration No.TN-01-AC-9873, belonging to the first respondent and insured with the second respondent, was driven by its rider in a rash and negligent manner and dashed against the claimant in which he suffered grievous injuries all over his body and the claimant was admitted at the Southern Railway Head Quarters Hospital, Perambur from 18.07.2015 to 04.08.2015 and undergone surgery on 20.07.2015 by implanting plates and screws at the tibia of right leg. Since the claimant was not able to do the regular work after suffering the injuries, the claimant claimed a sum of Rs.25,00,000/- under various heads.



C.M.A.No.3137 of 2024

WEB COPY

3. Before the Tribunal, the claimant examined himself as P.W.1 and marked Exs.P1 to P18. No witnesses was examined nor any document was marked on the side of the respondents. The Court document was marked as Ex.C1. The Tribunal, on considering the oral and documentary evidence, awarded a sum of Rs.2,68,500/- under various heads and directed the second respondent / Insurance Company to pay the same to the claimant. Not satisfied with the same, the present appeal has been filed by the claimant seeking enhancement.

4. The learned counsel appearing for the claimant submitted that when the Tribunal has accepted that the motorcycle bearing Registration No.TN-01-AC-9873 was driven in a rash and negligent manner and that the rider of the first respondent's vehicle was the cause for the accident and when the doctor had clearly deposed about the injuries suffered by the claimant, the compensation awarded by the Tribunal is grossly inadequate. When the doctor has clearly deposed about the disability suffered by the



C.M.A.No.3137 of 2024

WEB COPY

claimant, the amount of Rs.3,000/- per percentage of disability awarded by the Tribunal is wholly inadequate. The learned counsel further submits that at the time of accident, the injured was aged about 43 years and was working as practicing Advocate and earned about Rs.40,000/-as monthly income. However, the Tribunal fixed Rs.12,500/- as monthly income. Further, the amount awarded under the others heads are also minimal, which requires enhancement.

5. The first respondent remained *ex-parte* before the Tribunal.

6. Per contra, learned counsel appearing for the second respondent / Insurance company submitted that the amount of Rs.3,000/- awarded per percentage of disability is reasonable and so also the compensation awarded under the other heads, which does not require any enhancement.



C.M.A.No.3137 of 2024

WEB COPY

7. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

8. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded. In the instant case, the appellant / claimant was a practicing Advocate. The appellant / claimant suffered 'fracture right lateral condylar split depressed and right tibia proximal fracture'. The appellant / claimant has also taken treatment as inpatient from 18.07.2015 to 04.08.2015 and also undergone surgery on 20.07.2015 by implanting plates and screws at the tibia of right leg and also taken outpatient treatment. The total permanent disability that was determined by the Medical Board was 20% as per Ex.C1 and the Tribunal has calculated the compensation under the head 'disability' by fixing Rs.3,000/- towards per percentage of disability. In the considered view of this Court, the accident had taken place in the year



C.M.A.No.3137 of 2024

WEB COPY

2015 and this Court has been consistently fixing Rs.4,000/- towards per percentage of disability during the relevant point of time considering the cost of living. Hence, this Court finds it appropriate to award Rs.4,000/- towards per percentage of disability. In the light of the above finding, the compensation payable under the head 'disability' would be Rs.80,000/- [Rs.4,000/- * 20%]. The compensation that has been awarded under all the other heads does not require the interference of this Court.

9. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads is modified as under:

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Permanent disability	60,000/-	80,000/-
2	Pain and sufferings	60,000/-	60,000/-
3	Transportation charges	20,000/-	20,000/-
4	Extra nourishment	20,000/-	20,000/-
5	Damages to clothes	1,000/-	1,000/-
6	Attender charges	10,000/-	10,000/-
7	Loss of Income	62,500/-	62,500/-



C.M.A.No.3137 of 2024

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
8	Future medical expenses	25,000/-	25,000/-
9	Loss of amenities	10,000/-	10,000/-
	Total	Rs.2,68,500/-	Rs.2,88,500/-

10. In the result, this civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal at Rs.2,68,500/- is hereby enhanced to Rs.2,88,500/- together with interest @ 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the entire award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.A.C.T.O.P.No.3188 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court-II, Motor Vehicle Claims Petitions Court of Small Causes, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with



C.M.A.No.3137 of 2024

WEB COPY

interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. Insofar as the enhanced compensation of Rs.20,000/- is concerned, the claimant will not be entitled for interest for the period of delay of 1114 days as was ordered by this Court in C.M.P.No.13274 of 2024, dated 29.10.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

04.12.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

ssb

To

1. The Motor Accidents Claims Tribunal,



C.M.A.No.3137 of 2024

WEB COPY

Special Sub Court-II,
Motor Claims Petitions Court of Small Causes,
Chennai.

2. The Section Officer,
V.R. Section,
High Court, Chennai.



WEB COPY



C.M.A.No.3137 of 2024

M.DHANDAPANI, J.

ssb

C.M.A.No.3137 of 2024

04.12.2024