



WEB COPY



C.M.A. No. 2158 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2158 of 2021

Kesavamoorthy

... Appellant / Petitioner

Vs.

1. Murugesan

2. The Reliance General Insurance Co. Ltd.,
Sri Lakshmi Complex, 1st Floor,
Omalur Main Road, Bharathi Street,
Swarnapuri, Salem - 636 004. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 08.06.2020 passed in M.C.O.P. No. 705 of 2019 on the file of the Special Subordinate Judge No.I, Motor Accident Claims Tribunal, Salem.

For Appellant : M/s. C. Paraneedharan

For R1 : No Appearance

For R2 : M/s. Bhuvana Sundari.

JUDGMENT



C.M.A. No. 2158 of 2021

WEB COPY

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 705 of 2019, dated 08.06.2020 on the file of the Special Subordinate Judge No.I, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 14.10.2018, at about 3:15 PM, the claimant was riding a Yamaha Crux motorcycle bearing Registration No.TN-34-R-0984 on the Kallukadai to Thuthipalayam, while he reached near Chinnarpalayam ettaimadai valaivu, a Mahindra Maximo light goods vehicle bearing Registration No.TN-21-AP-4485 driven by the first respondent in a rash and negligence manner, dashed against the motorcycle of the claimant, thereby causing grievous injuries to the claimant. A criminal case was registered in Cr.No.239/2018 under Section 279, 337 of IPC on the file of Mallasamudram Police Station, Namakkal District. For the injuries sustained, the claimant has filed claim petition seeking compensation for a sum of Rs.15,00,000/- under Section 166 of the Motor Vehicles Act, 1988.



WEB COPY

4. The first and second respondents are the owner cum driver and insurer of the said Mahindra Maximo goods vehicle. The second respondent – insurance company has filed a counter and denied the manner in which the accident has taken place and contended that the accident has taken place only due to the negligence on the part of the claimant, who has ridden the motorcycle without wearing helmet and came in the wrong side of the curve road and dashed against the first respondent's vehicle, thereby invited the accident. The insurance company also disputed the age, income, occupation, injuries and disability sustained by the claimant.

5. Based on the evidence placed on record, the Tribunal has held that the first respondent is the tortfeasor and due to his rash and negligence, the accident has taken place. The Tribunal also quantified and granted compensation for a sum of Rs.2,05,460/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant.



6. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation and the insurance company has not preferred any appeal challenging the liability and quantum of compensation.

7. The learned counsel for the claimant submitted that the Tribunal has awarded only a meager compensation under various heads, more particularly under the head disability, the Tribunal has awarded only Rs.3,000/- per percentage of disability, hence prays to enhance the compensation.

8. Per contra, the learned counsel for the insurance company submitted that the Tribunal based on the evidence placed on record has awarded a just compensation, hence prays to confirm the award.

9. I have considered the submissions made on both sides and perused the materials available on record:

10. Ex.P.3- discharge summary of the claimant issued by Thirukumaran Hospitals, Tiruchengode shows that the claimant was



admitted on 14.10.2018 and two surgeries were conducted on 14.10.2018 and 15.10.2018 and he was discharged on 19.10.2018, hence he was under in-patient treatment for 6 days. The discharge summary shows that the claimant has sustained following injuries: Fracture III, IV, V Meta Carpal – Right Fracture Distal Radius & Ulnar Styloid Avulsion Fracture, PCL/ Fibular Head Right Knee and he was treated by the following procedure: Closed K wire fixation on Right Hand Meta CARPALS ORIF with cannulated cancellous screw & suture anchor for PCL Right knee.

11. Ex.C.1 – disability certificate of the claimant issued by the Medical Board, Omalur Government Hospital, which shows that the claimant has sustained 12% permanent disability for the injuries sustained by him during the accident. Based on the above medical records and disability certificate, the Tribunal has held that the claimant has not sustained functional disability, hence adopted percentage method and awarded Rs.3,000/- per percentage of disability and granted Rs.36,000/- as compensation under the head disability.

12. This Court judgment in *M. Chinnathambi vs. S. Deepa and*



another reported in **[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]** has awarded Rs.5,000/- per percentage of disability for the accident taken place from the year 2016 onwards, hence, considering the date of accident and also the age of the claimant herein, this Court is inclined to modify the award of Rs.3,000/- per percentage of disability by the Tribunal to Rs.5,000/- hence, the total compensation granted under the disability is modified to Rs.60,000/- (Rs.5,000/- x 12% of disability).

13. Considering the nature of injuries, treatment and disablement period, the Tribunal has considered the claimant would have lost his income for three months and awarded Rs.22,500/- has loss of income during the treatment period by fixing Rs.7,500/- per month as notional income of the claimant. This Court is of the view, that the notional income of Rs.7,500/- per month fixed by the Tribunal is on the lower side and the same is modified to Rs.12,500/- per month and accordingly, the compensation awarded under the head loss of income during the treatment period is enhanced to Rs.37,500/- (Rs.12,500/- X 3 months). Whereas the other conventional heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed.



WEB COPY 14. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Pain and Suffering	15,000/-	15,000/-	Confirmed
2.	Loss of income during the treatment period	22,500/-	37,500/-	Enhanced
3.	Medical expenses	93,460/-	93,460/-	Confirmed
4.	Transportation expenses	7,500/-	7,500/-	Confirmed
5.	Extra Nourishment	7,500/-	7,500/-	Confirmed
6.	Attender charges	7,500/-	7,500/-	Confirmed
7.	Damage to articles	1,000/-	1,000/-	Confirmed
8.	Loss of amenities	15,000/-	15,000/-	Confirmed
9.	Permanent Disability	36,000/-	60,000/-	Enhanced
	Total Compensation	2,05,460/-	2,44,460/-	Enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,05,460/- is hereby enhanced to **Rs.2,44,460/- [Rupees Two Lakh Forty Four Thousand Four Hundred and Sixty only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - Insurance



C.M.A. No. 2158 of 2021

Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.705 of 2019 on the file of the Special Subordinate Judge No.I, Motor Accidents Claims Tribunal, Salem. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

30.01.2024

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Subordinate Judge No.I,
Motor Accident Claims Petitions,



C.M.A. No. 2158 of 2021

Salem.

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

K. RAJASEKAR, J.

stn



WEB COPY



C.M.A. No. 2158 of 2021

C.M.A. No. 2158 of 2021

30.01.2024