



C.M.A.No.2190 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 23.01.2024	Pronounced on 31.01.2024
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2190 of 2021

Kabali
S/o.Thiruvengadam
No.1/10, Poomagal 2nd Street
Ambal Nagar, Ekkattuthangal
Guindy Industrial Estate
Chennai 600 032

... Appellant

Vs.

1.S.Nagaraj
S/o.Srinivasan
No.10, VOC Street
Meenatchipet
Pondicherry 605 008

2.Reliance General Insurance Co. Ltd.,
Plot No.6, 6th Floor
Haddows Road
Nungambakkam
Chennai 600 034

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.02.2020 made in MACTOP No.2190 of 2017 on the file of the Motor Accident Claims Tribunal and IV Court of Small Causes, Chennai.



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C.M.A.No.2190 of 2021

For Appellant : Mr.F.Terry Chella Raja
For Respondents : Mr.P.Suresh Srinivasan (for R2)
R1- Exparte

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 21.02.2020 made in MACTOP No.2190 of 2017 on the file of the Motor Accident Claims Tribunal and IV Court of Small Causes, Chennai.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed MACTOP No.2190 of 2017 on the file of the Motor Accident Claims Tribunal/IV Court of Small Causes, Chennai, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 20.03.2017. The Tribunal has awarded a sum of Rs.2,52,700/- with interest at the rate of 7.5%. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.



C.M.A.No.2190 of 2021

WEB COPY

4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

5.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P.1 to Ex.P.19 were marked and on the side of the Respondents, none was examined and no documents were marked.

6.Heard the learned counsel for the claim Petitioner and learned counsel for the Insurance Company.

7.The injured/claim Petitioner was examined as PW1 and to substantiate his claim Ex.P.2/Accident Register, Ex.P.3/discharge summary, Ex.P.4 & Ex.P.9/Medical bills, Ex.P.17/disability certificate issued by PW2 were marked.



C.M.A.No.2190 of 2021

WEB COPY

8. On perusal of the oral and documentary evidences, this Court finds that after the accident, the claim Petitioner took treatment as inpatient for four days from 20.03.2017 to 23.03.2017 in Vijaya Health Centre as could be seen from Ex.P.3/dischARGE summary. As per Ex.P.3, the claim Petitioner was diagnosed with crush injury on the left great toe with multiple laceration on left foot, fracture of right clavicle bone and fracture of second and sixth ribs on the right side and the claim Petitioner underwent a procedure viz., wound debridement and repair on left foot on 20.03.2017. PW2/Doctor who had examined the claim Petitioner have marked Ex.P.7/Prescription. As per his version, the disability is assessed at 30% and it is his specific evidence that the fracture was malunited and that there was pain and stiffness on left big toe and right shoulder and that the injured's shoulder movements were restricted and that the abduction was 0° to 90° only (Normal 180°). Hence, I find that there is a clear restriction on abduction movement. However, the Doctor has not produced any working sheet for proving the same. Hence, the trial Court instead of taking the disability at 30%, fixed it as 15% and award Rs.3,000/- per percentage.



C.M.A.No.2190 of 2021

WEB COPY

9.It is seen that the date of accident is 20.03.2017. After perusing the oral and documentary evidence of Doctor/PW2 coupled with Ex.P.2/Accident Register, I am of the considered view that the disability shall be fixed at 25% and accordingly, fixed the disability at 25% and granting Rs.5,000/- per percentage of the disability.

10.The Tribunal's award on other heads are just and fair, which does not require any interference of this Court. Accordingly, the enhanced award amount is re-assessed as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Disability (25 % x Rs.5,000/-)	125000
2	Medical expenses	151705
3	Loss of income	10000
4	Pain and sufferings	15000
5	Transportation charges	5000
6	Additional nourishment	10000
7	Damages to clothes	1000
8	Attender charges	5000
9	Loss of amenities	10000
	Total	332705
	Rounded off	332700



C.M.A.No.2190 of 2021

The Tribunal has awarded 7.5 % interest, the same is also hereby confirmed.

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11.In total, the claim Petitioner is entitled to a sum of Rs.3,32,700/-
(Rupees three laksh thirty two thousand seven hundred only).

12.In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.2,52,700/- to Rs.3,32,700/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company 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.



C.M.A.No.2190 of 2021

WEB COPY

(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.

31.01.2024

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

The IV Judge
Court of Small Causes,
(Motor Accident Claims Tribunal)
Chennai.



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C.M.A.No.2190 of 2021

RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

C.M.A.No.2190 of 2021

Dated: 31.01.2024