



C.M.A.No.319 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 22.02.2024	Pronounced on 27.03.2024
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.319 of 2021

M.Sathishkumar
Son of Marudhachalam
residing at
Chinnakaliamman Kovil Street
Dharapuram Post
Tiruppur District.

... Appellant

Vs.

1.D.Vinothkumar
residing at
262, Velacherry Main Road
East Tambaram
Chennai

2.The Oriental Insurance Company Ltd.,
CBO-1
Sivacomplex, 2nd Floor
No.22-C, Sarada College Main Road
Salem 636 016

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the



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Judgment and Decree dated 04.04.2019 passed in MCOP.No.351 of 2015 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.2, Salem.

For Appellant : Mr.C.Thangaraju

For Respondents : Mr.J.Chandran (for R2)

J U D G M E N T

The Appeal has been filed against the Judgment and Decree dated 04.04.2019 passed in MCOP.No.351 of 2015 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.2, Salem.

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 MCOP.No.351 of 2015 on the file of the Motor Accident Claims Tribunal/Special Sub Judge No.2, Salem, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 03.01.2015. The Tribunal has awarded a sum of Rs.8,68,988/-



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with interest at the rate of 7.5%. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.

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 was examined, Ex.P.1 to Ex.P.8 were marked and on the side of the Respondents, RW1 was examined and Ex.R1 was marked and the Ex.C1 was marked as court document.

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



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7.Learned counsel for the claim Petitioner would contend that the claim Petitioner was aged 17 years old at the time of the accident and notional income fixed by the Tribunal at Rs.6,500/- is too low and even though the disability assessed by the Medical Board in Ex.C1 is 30%, the Tribunal restricted it to 10% functional disability. Hence he seeks for enhancement of compensation.

8.Learned counsel for the Insurance company would contend that the claim Petitioner was aged about 17 years at the time of the accident. The claim Petitioner does not have necessary age even to get driving licence at the time of the accident. The Doctor who treated the claim Petitioner at the time of the accident also noted the smell of alcohol and the case has also been closed as mistake of fact. Hence, he made submission in support of the award of the Tribunal.

9.The claim Petitioner has filed Ex.P.8/copy of Aadhar card, which reveals the date of birth of the claim Petitioner as 30.06.1987. The date of accident is 03.01.2015, therefore as on the date of accident, the age of the claim Petitioner is 17 years. In the said accident he suffered the following injuries:



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- “1.Left temporal and parietal EDH*
- 2.Right frontal haemorrhage*
- 3.Left femur shaft fracture*
- 4.Left tibia shaft fracture with foot drop*
- 5.Contused lacerated wound over anterior aspect of tibia, ankle and heel.”*

As per Ex.C1, the Medical Board has fixed the permanent disability at 30% and it observed as under:

- “1.He has difficulty in climbing stairs, walking on slopes,*
- 2.He has difficulty is sitting crossed leg, kneel and squatting on the floor*
- 3.Pain at the fracture site. He has deformity of the left leg*
- 4.He has loss of sensation over the skin graft region”*

10.The Tribunal has fixed the notional income at Rs.6,500/-, taking into consideration the date of the accident, the same is enhanced to Rs.7,500/-. The Tribunal has added 40% towards future prospects and adopted '18' as multiplier. The Hon'ble Apex Court in the case of ***Rajkumar Vs. Ajaykumar & another*** reported in ***2010 (2) TNMAC 581 SC*** summarised the principles for assessment of functional disability. The trial Court has taken note of the injuries as reflected in the disability certificate (30%) issued by the Medical



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Board, fixed the functional disability at 10%. Based on the injuries sustained by the claim Petitioner, I am inclined to fix the same at 15%. Hence, the pecuniary loss sustained by the claim Petitioner is re-assessed as follows:

$$[\text{Rs.7,500/-} + (40\% \text{ of } 7500\text{-})] \times 12 \times 18 \times 15\% = \text{Rs.3,40,200/-}$$

11.The Tribunal has awarded a sum of Rs.15,000/- towards attender charges. Ex.P.4/ discharge summary reveals that the claim Petitioner has taken treatment as inpatient for the periods from 08.01.2015 to 27.01.2015 and 12.03.2015 to 02.04.2015. Hence a sum of Rs.25,000/- is awarded towards attender charges. Based on Ex.P.5(s), the Tribunal has awarded a sum of Rs.6,01,928/-. The same is hereby confirmed.

12.The Tribunal has awarded a sum of Rs.20,000/- towards pain and sufferings, the same is enhanced to Rs.30,000/-. The Tribunal has awarded a sum of Rs.25,000/- towards loss of amenities, the same is confirmed. The tribunal has awarded a sum of Rs.10,000/- towards nutrition charges, the same is enhanced to Rs.20,000/-. The Tribunal has awarded a sum of Rs.500/- towards damages to clothes, the same is also hereby confirmed. Apart from



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this a sum of Rs.10,000/- is awarded towards transportation charges.

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<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Functional disability	340200
2	Pain and sufferings	30000
3	Loss of amenities	25000
4	Medical expenses	601928
5	Nutrition charges	20000
6	Attender charges	25000
7	Transportation	10000
8	Damages to clothes	500
	Total	1052628

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

13.In total, the claim Petitioner is entitled to a sum of Rs.10,52,628/-
(Rupees ten lakh fifty two thousand six hundred and twenty eight only).

14. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.8,68,988/- to Rs.10,52,628/- 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



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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.

27.03.2024

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

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To
The Special Sub Judge 2
Motor Accident Claims Tribunal
Salem



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 27.03.2024