



CMA No.2458 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2458 of 2021

Judgment reserved on 11.01.2024	Judgment pronounced on 09.02.2024
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Sarala

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Appellant

Vs.

1.Sivarajan

2.The New India Assurance Co. Ltd.,
Shevapet (721500)
17, Fort Main Road,
2nd Floor, Shevapet,
Salem – 636 002.

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Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree in MCOP No.1577 of 2019 dated 18.03.2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.1, Salem.

For Appellant	: Mr.C.Paraneedharan
For R1	: No appearance
For R2	: Mr.J.Chandran



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JUDGMENT

The claim petitioner is the appellant herein seeking enhancement of compensation awarded in M.C.O.P.No.1577 of 2019 on the file of the Motor Accident Claims Tribunal Judge /Special Subordinate Judge No.1, Salem.

2. For the sake of convenience, the parties are referred to as per their litigating status before the trial Court.

3. The factum of accident, manner of accident, rash and negligent on the part of the driver of the offending vehicle and vehicle being insured with the second respondent/Insurance company are not in dispute. Accordingly, the finding rendered by the Trial Court with regard to negligence are hereby confirmed.

4. On the point of quantum of compensation, both the counsel for the appellant as well as second respondent appeared. Though notice has been served on the first respondent and his name has been printed in the cause list, there is no representation for the first respondent.



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5. The claim petitioner is the house wife. In the road transport accident happened on 16.12.2018, she suffered injuries as could be seen from Ex.C1 – disability certificate issued by the Medical Board, which reads as follows -

Nature of Injury : RTA Both bone left leg fracture and medical malleolus fracture and raw area, EDH occipital fracture, Present condition : Pain and stiffness right knee, difficulty in walking and climbing upstairs, squatting and sitting cross leg”.

6. On perusal of Ex.P14 – discharge summary, it is found that the claim petitioner has sustained the following injuries -

RTA with

- (i) Grade III B Fracture both bones left leg
- (ii) Post – Traumatic raw area left leg – middle / 3rd calf / lateral ankle - on external fixator.
- (iii) Post – Traumatic raw area middle 1/3 left leg with raw area

One month old Grade III B fracture both bones left leg – on external fixator fracture with fracture left medical malleolus.

- (iv) Head injury : EDH-Occiput Fracture occipital bone



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7. After perusing the evidence of PW1 coupled with Ex.P4 – discharge summary and Ex.C1 – permanent disability certificate issued by Medical Board, the permanent disability suffered by the claim petitioner is fixed at 35%. The date of accident being 16.12.2018, the compensation is fixed as Rs.4,000/- per percentage of disability. Accordingly, a sum of Rs.1,40,000/- (Rs.4000 x 35). Considering the nature of injuries and period of treatment, the compensation awarded by the Tribunal is meagre and hence the same are modified and enhanced, break-up as follows -

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Pain and Sufferings	35,000/-	50,000/-
2.	Loss of income during treatment period	45,000/- (7500 x 6)	75,000/- (7500 x 10)
3.	Medical expenses, as per Ex.P5	3,92,963/-	3,92,963/-
4.	Transportation expenses	15,000/-	25,000/-
5.	Extra nourishment	15,000/-	20,000/-
6.	Attender charges	15,000/-	20,000/-
7.	Loss of amenities	50,000/-	25,000/-
8.	Damages to clothes	1,000/-	1,000/-
8.	Permanent disability	1,05,000/- (3000 x 35)	1,40,000/- (4000 x 35)
	Total	6,73,963/-	7,48,963/-



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Sl. No	Heads under which the amount is awarded	Amount awarded by the Tribunal – Rs.	Amount awarded by this Court – Rs.
	Less : 10% contributory negligence	67,396/-	74,896/-
	Net compensation payable to the claim petitioner	6,06,567/-	6,74,067/-

In total, the claim petitioner is entitled to a sum of Rs.6,74,067/-

(Rupees Six Lakhs Seventy Four Thousand and Sixty Seven only)

8. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.6,06,567/- to Rs.6,74,067/- to the extent indicated above, alongwith 7.5% interest per annum. No costs.

(ii) the 2nd Respondent/New India Assurance Company Limited 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.

(iv) the claim petitioner/appellant is directed to pay the court fee,



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if any, for the enhanced compensation amount and the Registry is directed

to draft the decree only after the receipt of Court fee.

09.02.2024

rgr

Index : Yes/No

Speaking/Non-speaking order

To

1.The Special District
Motor Accident Claims Tribunal,
Special Subordinate Judge No.1,
Salem.

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



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RMT.TEEKAA RAMAN, J.

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