



C.M.A. No. 2475 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2475 of 2021

Nandhagopal

... Appellant / Petitioner

Vs.

1. Shankar

2. A.M.V. Jayaraman

3. The United India Insurance Co. Ltd.,
D.O.Code No.170600, 1171,
Muthaiah Complex,
Mettur Road, Erode - 638 011.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 09.07.2020 passed in M.A.C.T.O.P. No. 1270 of 2019 on the file of the I Special District Judge, Motor Accident Claims Tribunal, Salem.

For Appellant : M/s. C. Paraneedharan

For RR 1 & 2 : No Appearance

For R3 : M/s. D. Bhaskaran



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 1270 of 2019, dated 09.07.2020 on the file of the I Special District Judge, 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 16.11.2018, at about 6:40PM, the claimant was riding a TVS Wego Scooter bearing Registration No.TN-52-F-9963 on the Salem to Kovai National Highway, while he reached near Soolaimedu, Eicher Company, a bus bearing Registration No.TN-86-C-2299 came behind the claimant in a rash and negligent manner, hit on the backside of the claimant's scooter and caused grievous injuries. A criminal case was registered against the driver of the bus in Cr.No.717/2018 U/s. 279, 338 of IPC on the file of Kondalampatty Police Station. For the injuries sustained, the claimant filed a claim petition seeking compensation for a sum of



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Rs.15,00,000/- under section 166 of the Motor Vehicles Act, 1988.

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4. The third respondent - insurance company, who is the insurer of the bus bearing Registration No.TN-86-C-2299, filed a counter and disputed the manner in which the accident has taken place and contended that the bus driver has driven the bus with due care and caution, the accident has happened only due to the rash and negligence on the part of the claimant, who has not possessed a valid driving licence and rode the scooter without head gear at the time of occurrence. The insurance company also disputed the age, occupation, injuries sustained, disability and income of the claimant and contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition. The first and second respondents have not contested the claim and remained ex-parte.

5. Based on the evidence placed on record, the Tribunal in point no.1 has held that the rash and negligence on the part of the first respondent is responsible for the accident. In point nos.2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.5,07,342/- 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 third respondent - insurance company to indemnify the second respondent and to pay compensation to the claimant.

6. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation. The insurance company has not preferred any appeal challenging the liability fixed on them.

7. The learned counsel appearing for the claimant submitted that the Tribunal has not properly appreciated the injuries sustained by the claimant and awarded lower compensation under the head Disability, loss of income during the treatment period and pain and suffering. Further submitted that the Tribunal ought to have adopted multiplier method in awarding compensation under the head loss of income and the compensation awarded under various heads are on the lower side, hence prays to enhance the compensation.

8. Per contra, the learned counsel appearing for the insurance company submitted that based on the evidences placed on record, the



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Tribunal 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.X.1- disability certificate of the claimant issued by the Medical Board shows that the claimant has sustained 25% permanent disability and he sustained fracture shaft of right side femur with fracture lateral femoral condyle and bimalleolar fracture right ankle and degloving injury right thigh and he is facing difficulty in squatting and sitting cross legged, pain in hip and ankle limp while walking, hence the Tribunal has accepted the percentage of disability assessed by the Medical Board and awarded Rs.3,000/- per percentage of disability. Considering the nature of injuries and the disability certificate issued by the Medical Board shows that the claimant has sustained only permanent disability and not functional disability, hence this Court is of the view that the Tribunal has rightly adopted percentage method in granting compensation. However, this Court in *M. Chinnathambi vs. S. Deepa and another* [CDJ 2020 MHC 1013;



2020 (1) TNMAC 617], awarded Rs.5,000/- per percentage of disability for the accident cases 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.1,25,000/- (Rs.5,000/- x 25% of disability).

11. With regard to loss of income during the treatment period, before the Tribunal, the claimant has submitted that he was earning Rs.12,000/- per month, but to prove the same, the claimant has not adduced any oral or documentary evidence, hence the Tribunal by considering the age of the claimant has fixed Rs.7,500/- as the monthly income of the claimant. The Tribunal based on Exs.P.2 to P.4 - medical records and the nature of injuries sustained by the claimant has held that, the claimant would have lost his income for a period of five months, hence awarded Rs.37,500/- (Rs.7,500/- x 5) as loss of income for the claimant during his treatment period. Considering the nature of injuries, the award of five months loss of income during the treatment period by the Tribunal is



reasonable and proper. However, considering the age of the claimant and date of accident, this Court is of the view that the monthly income fixed by the Tribunal is on the lower side, hence this Court is inclined to modify the monthly income of the claimant as Rs.10,000/- and accordingly, the compensation under loss of income during the treatment period is modified as Rs.50,000/- (Rs.10,000/- X 5).

12. The Tribunal has awarded Rs.25,000/- under the head pain and suffering, while considering the nature of injuries sustained by the claimant and period of treatment, this Court is inclined to modify the same to Rs.30,000/-. Whereas the other heads are concerned, the Tribunal has awarded a just compensation and the same are hereby confirmed.

13. 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 Sufferings	25,000/-	30,000/-	Enhanced
2.	Loss of income during the treatment period	37,500/-	50,000/-	Enhanced



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
3.	Medical expenses	3,06,342/-	3,06,342/-	Confirmed
4.	Transportation Charges	12,500/-	12,500/-	Confirmed
5.	Extra Nourishment	12,500/-	12,500/-	Confirmed
6.	Attender Charges	12,500/-	12,500/-	Confirmed
7.	Damage to articles	1,000/-	1,000/-	Confirmed
8.	Loss of amenities	25,000/-	25,000/-	Confirmed
9.	Permanent Disability	75,000/-	1,25,000/-	Enhanced
	Total Compensation	5,07,342/-	5,74,842/-	Enhanced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,07,342/- is hereby enhanced to **Rs.5,74,842/- [Rupees Five Lakh Seventy Four Thousand Eight Hundred and Forty Two 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 realization, excluding the default period, if any. The Third Respondent - Insurance 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.1270 of 2019 on the file



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of the I Special District Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the claimant/ appellant herein 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.

05.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The I Special District Judge,
Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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