



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A.No.2590 of 2021

and

M.C.O.P.No.79 of 2012

V.Gokul

... Appellant/Petitioner

Vs.

1. G.Munusamy

2. The Divisional Manager,
New India Assurance Company Limited,
No. 69, 70, Sheikpet,
North Street,
Kancheepuram.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, to allow Civil Miscellaneous Appeal and enhance the award in Judgement and Decree dated 21.04.2021 made in M.C.O.P.No. 79 of 2012 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Kancheepuram.

For Appellant : Mr. M.Sivakumar

For R1 : No appearance

For R2 : Mr.R.Sree Vidhya



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P.No. 79 of 2012 dated 21.04.2021 on the file of the Motor Accident Claims Tribunal, Principal Subordinate Judge, Kancheepuram.

2. For better appreciation, the parties are referred according to their litigative status before the Tribunal below.

3. The facts leading to filing of the claim petition are as follows:

3.1 On 10.09.2011 at about 7.30p.m, the petitioner travelling as a pillion rider in a motor cycle with rider namely by one K.Chelladurai, from Kancheepuram Town Mettu Street towards Bus Stand with normal speed on the extreme left side of the road. While so at the above said place near opposite to D.S.Mani Cycle Shop at Vallal Pachaiyappan Street on the Kanchipuram town limit, the first respondent lorry bearing No. TCZ-2697 which was driven by its driver and proceeding from the same direction in a rash and negligent manner and hit behind the petitioner's motor cycle.



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3.2 Due to the accident, the petitioner has sustained multiple grievous injuries all over the body. The accident was occurred due to the rash and negligent driving of the first respondent lorry driver. Aggrieved the same, the claimants have come forward with this claim petition seeking compensation for a sum of Rs. 25,00,000/- for the injuries sustained by the petitioner by invoking Section 166-A of Motor Vehicles Act and Rule 3 of MACT Rules.

4. The second respondent has filed counter affidavit denying all the averment made in the claim petition and disputed the claim on the ground that the claimant ridden the two wheeler, he lost control of the vehicle and fell down on a Car and sustained injuries. But the petitioner has cooked-up a different story to file the case, as though the lorry dashed from behind. The petitioner has managed the police to file a false case to make this claim. It further submitted that the claim of the petitioner is very high and excessive. Hence, prays to dismiss the petition.

5. The Tribunal after considering the evidence placed on records, accepted the case of the claimant and awarded compensation for a



sum of Rs. 9,88,670/-.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has approached this Court seeking enhancement of compensation. The respondents have not come forward with any appeal against the award.

7. The learned counsel for the claimant would submit that the compensation awarded by the Tribunal under various heads such as Pain and Suffering, Transportation and Extra nourishment are on the lower side, and more particularly the Tribunal has not awarded compensation under the head loss of income during treatment period and prays to enhance the compensation.

8. The learned counsel for the second respondent/insurance company submitted that the compensation awarded is based on the evidence placed on record and there is no reason for enhancement of compensation and prays to dismiss the appeal.



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9. Heard the learned counsel appearing on either side and perused the entire evidence placed on record.

10. The Tribunal after considering the evidence placed on record has accepted that the claimant has sustained 50% of disability which was assessed based on the disability certificate issued by the District Medical Board, Kancheepuram. The Tribunal has awarded compensation of Rs.3,000/- per percentage of disability treating the disability as non functional disability and this Court finds no infirmity in the same. The records also shows that claimant has undergone inpatient treatment for a period of 55 days, having noted the number of days of treatment, the Tribunal has awarded only Rs.12,000/- under the head loss of income during the treatment period. Considering the period of inpatient treatment and year of accident, this Court is of the view that the compensation awarded under the head loss of income during the treatment period is on the lower side, on perusal of the medical records shows that the claimant has sustained fracture on the left femur, open wound of right inguinal region and proximal thigh with external iliac vein tear, which would have caused



loss of earnings to the claimant for a period of six month, thereby, Rs.60,000/- is awarded by taking the monthly notional income of the claimant as Rs.10,000/-.

11. Similarly, the attender charges is also modified to Rs.25,000/-, Pain and Suffering is modified to Rs. 35,000/-. Considering the nature of injuries the compensation awarded under the Transportation Expenses and Extra Nourishment are enhanced each to the extent of Rs.10,000/-. As far as other aspects of the award concern including pay and recover ordered by the Tribunal is hereby confirmed.

12. 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 the Court (Rs.)	Award confirmed or enhanced or reduced
1.	Medical Expenses	7,90,420/-	7,90,420/-	Confirmed
2.	Disability	1,50,000/-	1,50,000/-	Confirmed
3.	Attendant Charges	8,250/-	25,000/-	Enhanced
4.	Loss of Income	12,000/-	60,000/-	Enhanced
5.	Pain and Sufferings	25,000/-	35,000/-	Enhanced
6.	Transportation	1,000/-	10,000/-	Enhanced
7.	Extra Nourishment	2,000/-	10,000/-	Enhanced



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S.No.	Description	Amount Awarded by Tribunal (Rs.)	Amount Awarded by the Court (Rs.)	Award confirmed or enhanced or reduced
	Total	9,88,670/-	10,80,420/-	Enhanced

13. The claimants would be entitled to a sum of Rs.10,80,420/- as enhanced compensation along with interest at the rate of 7.5% per annum from date of accident till date of deposit. The insurance company is directed to deposit the enhanced compensation of Rs.10,80,420 /- less the amount, if any, already deposited within a period of six weeks from the date of receipt of copy of this order. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

22.02.2024

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Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. Motor Accidents Claims Tribunal,
Principal District Judge, Kancheepuram



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2. The Section Officer,
VR Section, High Court, Madras.

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K.RAJASEKAR.J

ns1

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