



CM.A.No.3098 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.No.3098 of 2021

Manikandan

...Appellant

Vs.

1. K.N.P.Vadivel

2. National Insurance Company Ltd.,

Divisional Officer, No74-A, Paramathi Road,

Namakkal Town & District.

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, for the enhancement of the compensation in the Judgment and decree dated 30.09.2020 made in M.C.O.P No.1264 of 2015 on the file of MACT/Additional District Court at Namakkal.

For Appellant : Mr.M.Lokesh

For Respondents : Mr.S.Vadivel for R2

Notice dispensed with for R1



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JUDGMENT

This Civil Miscellaneous Appeal is preferred against the award of the Motor Accident Claims Tribunal/Additional District Court at Namakkal in M.C.O.P.No.1264 of 2015.

2. Shortly stated, on 16.12.2014 at about 02.30 am at near Kosavampatty Railway Bridge, on the road of Namakkal to Thuraiyur Main Road, the injured petitioner Manikandan was riding in a Apache Two Wheeler bearing Registration No.TN-28/AM-5520 on the left side of the road towards east to west direction. At the same time, a Swift Car bearing Registration No.TN-28/AE-4313 was in opposite direction. Unfortunately, the petitioner's vehicle hit the Swift Car and caused the accident. Due to this accident, the petitioner sustained following injuries namely:-

1. Head injury with hemorrhage contusion both frontal lobe right tempero partial subdural hematoma.
2. Multiple abrasions over the left foot and toes.
3. Lacerated wound over the right leg.



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3. Lacerated wound over left leg as per wound certificate.

4. Immediately after the accident, the injured petitioner was admitted in M.M. Hospital, Namakkal for better treatment. He was inpatient for more than 12 days and spent nearly Rs.1,00,000/- for medical expenses. Till today, he is taking treatment as an outpatient.

5. The 2nd respondent in its counter affidavit resisted the claim of the petitioner by stating that in the investigation of the Namakkal Police, it was found that the injured was responsible for the accident due to the rash and negligent driving of the two wheeler. The Namakkal Police also registered a case in Cr.No.929 of 2014 under Section 279 and 337 IPC and was closed as “mistake of fact”. Even the M.V.I. report would elucidate that the accident occurred due to the negligent act of the petitioner.

6. Before the Tribunal, the petitioner has examined himself as P.W.1 and three other witnesses were examined as P.W.2 to P.W.4. 15 documents were marked as Ex.P1 to Ex.P15. On the side of the 2nd



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respondent, two witnesses were examined as R.W.1 and R.W.2. Ex.R1 and Ex.R2 were marked.

7. Based on the pleadings, the Tribunal has formulated the following points for consideration.

1. Whether the accident in question occurred due to the rash and negligent driving of the driver of the 1st respondent's car bearing registration number TN 28 AE 4313?

2. Whether the injuries sustained by the petitioner has caused any disability reducing his earning power?

3. Whether the petitioner is entitled to claim compensation and if so what is the just compensation that can be awarded to the petitioner?

4. Whether the respondents are liable to pay compensation awarded to the petitioner?

5. To what other reliefs?

8. The Tribunal came to the conclusion that the accident took place due to the rash and negligent driving of the driver of the 1st respondent car bearing registration number TN 28 AE 4313 and awarded compensation a sum of Rs.2,10,000/- carrying interest at the rate of 7.5% per annum.



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9. Before the Tribunal, P.W.2 & P.W.4 were examined to speak about the disability caused to the petitioner. P.W.2, an Orthopadic surgeon who issued Ex.P.12 disability certificate deposed that, due to the said accident the claimant has suffered 26% of permanent disability. Whereas, P.W.4, in Ex.P.15 disability certificate assessed the disability as 40%. However the Tribunal fixed 30% disability and the order of the Tribunal in this regard is extracted as follows:-

“However, from the evidence of P.W.2 and P.W.4 it is pellucid that there is no consensus of opinion between the two physicians as to the nature of disability caused and the percentage of disability caused to the petitioner. Situated thus this Tribunal on evaluation of the evidence on record decides that the injuries sustained by the petitioner in the accident has caused partial permanent disability to the petitioner and the percentage of disability can be safely fixed at 30%.”

10. The learned counsel appearing for the appellant/injured would argue that the accident in this case took place in the year 2014. However, the Tribunal has taken a sum of Rs.3000/- for each percentage of disability,



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which is very meager. To support his contention, he has relied upon the decision ***M.Chinnathambi Vs. S.Deepa*** reported in **2020 (1) TN MAC 617**, in which it is held as follows:-

“This Court by the Judgment reported in the matter of National Insurance Co. Ltd. v. G. Ramesh, 2013 (2) TN MAC 583, granted Rs.3,000 per percentage for accident occurred in the year 2009, enhancing from Rs.2,000 per percentage taking into account the cost of living at that time. Due to passage of time, a sum of Rs.3,000 per percentage of disability awarded in the year 2013 for the accident of the year 2009 is to be enhanced. Taking into consideration the raise in cost of living, it will be reasonable to Award a sum of Rs.4,000 per percentage for the accident of the year 2014 and 2015 and Rs.5,000 per percentage for the accident from the year 2016 onwards towards disability certified by the qualified Doctor or Medical Board. In the present case, the accident has occurred on 1.7.2016. A sum of Rs.5,000 per percentage of disability is granted. Accordingly, a sum of Rs.60,000 (Rs.5,000 x 12%) is awarded towards disability by awarding a sum of Rs.5,000 per percentage of disability.”



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11. On the other hand, the learned counsel appearing for the 2nd respondent/Insurance Company would submit that when there is no consensus of opinion between the two Doctors, the Tribunal ought not to have fixed even 30% of disability.

12. Heard on both sides. Records perused.

13. The Tribunal on appreciating the evidence on record and the injuries sustained by the petitioner in the accident, rightly came to the conclusion that the claimant has suffered a partial permanent disability and had rightly fixed 30% disability. The order of the Tribunal in this regard is confirmed.

14. As per the decision case reported in **2020(1) TN MAC 617**, the injured is entitled to a sum of Rs.4000/- per percentage for 30% disability i.e.,
 $\text{Rs.4000/-} \times 30 = \text{Rs.1,20,000/-}$.



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15. Considering the nature of injury suffered by the claimant a sum of Rs.30,000/- is awarded under the head of loss of income.

16. The compensation awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Compensation for disability caused	90,000/-	1,20,000/-	Modified
2.	Medical expenses	75,000/-	75,000/-	confirmed
3.	Compensation for pain and sufferings	15,000/-	15,000/-	confirmed
4.	Transport to hospital	10,000/-	10,000/-	confirmed
5.	Attendant charges	10,000/-	10,000/-	confirmed
6.	Extra nourishment and other incidental expenses	10,000/-	10,000/-	confirmed
7.	Loss of Income	-	30,000/-	granted
	Total	Rs.2,10,000/-	Rs.2,70,000/-	enhanced by Rs.60,000/-



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17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,10,000/- is hereby enhanced to Rs.2,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay the Court fee, if any on the enhanced amount of compensation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined 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. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. No costs.

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mac/vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

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K.GOVINDARAJAN THILAKAVADI, J.

mac/vsn

To

- 1.The Additional District Court,
Motor Accident Claims Tribunal, Namakkal
2. The Section Officer,
VR Section,
High Court, Madras.

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