



CMA.No.3052 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CMA.No.3052 of 2024

J.Joseph Stalin

...Appellant

Vs.

1. M/s.Cholamandalam General Insurance Co. Ltd.,
Dare House, 2nd Floor,
No.2, N.S.C Bose Road,
Chennai – 600 001.

2. Sekar

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the order dated 14.12.2023 passed in MCOP.No.3085 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Ms.A.Dhanalakshmi

For Respondents : Mr.J.Michael Visuvasam, for R1
: Notice dispensed with, for R2

JUDGEMENT



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Challenging the award dated 14.12.2023 made in MCOP.No.3085 of 2017 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai, the claimant is before this Court.

2. Mr.J.Michael Visuvasam, learned counsel takes notice on behalf of the 1st respondent. In view of the consent expressed by the learned counsel on either side, this appeal is taken up for final disposal at the admission stage itself.

3. Since the 2nd respondent remained exparte before the tribunal, notice to the 2nd respondent is dispensed with, in view of the endorsement made by the learned counsel for the appellant in the petition today.

4. It is the case of the appellant/claimant that, on 02.03.2017 at about 07.30 am., when he was riding a Yamaha bike bearing Regn.No.TN-05-AM-9622 at GNT Road near Ashok Leyland shown room, at that time, an auto bearing Regn.No.TN-02-AA-4950 owned by the 2nd respondent insured with the 1st respondent driven by its driver came in a rash and negligent manner and



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hit the bike in which the appellant was travelling, due to which, the appellant sustained grievous injuries. Thereby, the appellant filed a claim petition seeking compensation of Rs.30,00,000/-. Before the tribunal, on the side of the appellant/claimant two witnesses viz., P.W.1 and P.W.2 were examined and exhibits P.1 to P.27 were marked and on the side of respondents no documents were marked and no witness was examined and the Disability Certificate was marked as Court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place due to the rash and negligent driving on the part of the driver of the 2nd respondent, however, awarded a meagre compensation of Rs.4,54,400/-. Challenging the same, the appellant has filed the present appeal, seeking enhancement of compensation.

5. Learned counsel appearing for the appellant submitted that, the above said accident occurred solely due to the rash and negligent driving on the part of the driver of the 2nd respondent, due to which, the appellant sustained grievous fracture injuries and the medical board also assessed a permanent disability of 20% and accident is of the year 2017, however, the tribunal had



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taken only a sum of Rs.5,000/- per percentage of disability and awarded a meagre compensation under the head Disability and the compensation awarded under other heads are also on lower side and the same has to necessarily be enhanced. Accordingly, she prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

7. Heard the learned counsel on either side and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievance of the appellant/claimant is with regard to the quantum of compensation awarded by the Tribunal. It is claimed by the appellant that though the accident is of the year 2017, however, the Tribunal had taken only a sum of Rs.5,000/-



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per percentage of disability. In this regard, this Court perused Ex.C.1, which is the disability certificate issued by the Medical Board and the same reveals that the appellant suffered disability of 20% and by erroneously adopting a sum of Rs.5,000/- per percentage of disability, the tribunal awarded a sum of Rs.1,00,000/-. However, as per the existing law at the relevant point of time, the Tribunal ought to have fixed a sum of Rs.7,000/- per percentage of disability. Hence, the amount under the head Disability stands enhanced to a sum of Rs.1,40,000 /- ($20\% \times \text{Rs.}7,000/- = \text{Rs.}1,40,000/-$).

9. Insofar as the compensation awarded under other heads are concerned, the tribunal had awarded a sum of Rs.30,000/- and Rs.4,000/- under the heads Pain and sufferings and Transport charges respectively, which are on the lower side and thereby, this Court is inclined to enhance the same to Rs.50,000/- and Rs.20,000/- respectively.

10. Further, no compensation has been awarded under the head Extra nourishment and Attender charges and therefore, this Court is inclined to award a sum of Rs.20,000/- and Rs.10,000/- respectively under the said heads.



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11. On a perusal of Ex.P23, Physiotherapy Bills, it is seen that the appellant/injured claimant has underwent physiotherapy for the fracture suffered below his hip. Taking note of the same and considering the intensity of the injuries suffered by the appellant/claimant, a sum of Rs.20,000/- is awarded by this Court under the head 'Physiotherapy'.

12. In view of the above, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Disability	1,00,000/-	1,40,000/-
Pain and sufferings	25,000/-	50,000/-
Transport charges	4,000/-	20,000/-
Medical expenses	3,19,426/-	3,19,426/-
Attender charges	-	10,000/-
Extra Nourishment	-	20,000/-
Physiotherapy	-	20,000/-
Damages to clothes	1,000/-	1,000/-
Total	4,54,426/-	5,80,426/-
Rounded off to	4,54,400/-	5,80,500/-



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13. Accordingly, the appeal is allowed in part and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.4,54,400/- to Rs.5,80,500/-**. The 1st respondent/Insurance Company is directed to deposit the said amount to the credit of MCOP.No.3085 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. It is underscored that the appellant is not entitled to any interest for the default period, if any. No Costs.

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skt



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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No

To

The Motor Accident Claims Tribunal,
III Small Causes Court,
Chennai.

M.DHANDAPANI, J.

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