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C.M.A.No.2670 of 2022 and Cross Obj.No.86 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.2670 of 2022,
Cross Obj.No.86 of 2023
and
C.M.P.No.20904 of 2022

1.The Director,
Department of Rural Development,
Panagal Building, Saidapet, Chennai.

2.The State represented by
District Collector,
Thiruvarur District, Thiruvarur.

..Appellants in CMA.No.2670/2022 /
Respondents in Cross Obj.No.86/2023

Vs.

Madhanraj

..Respondent in CMA.No.2670/2022 /
Cross objector in Cross Obj.No.86/2023

Prayer in CMA.No.2670 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the judgment and decree dated 30.09.2021 passed by the Motor Accident Claims Tribunal, [Chief Judicial Magistrate Court, Thiruvarur] in M.C.O.P.No.04 of 2019.



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Prayer in Cross Obj.No.86 of 2023: Cross Objection filed under Order XLI Rule 22 of the Code of Civil Procedure, 1908 praying to dismiss the CMA.No.2670 of 2022 and to enhance the compensation awarded by the Motor Accident Claims Tribunal, [Chief Judicial Magistrate, Thiruvarur] in decree and judgment dated 30.09.2021 passed in M.C.O.P.No.04 of 2019.

For Appellants in CMA.No.2670/2022/

Respondents in Cross Obj.No.86/2023 : Mrs.R.Anitha,
Special Government Pleader

For Respondent in CMA.No.2670/2022 /

Cross objector in Cross Obj.No.86/2023 : Mr.K.V.Sundararajan

COMMON JUDGMENT

Feeling aggrieved with the award passed by the Motor Accident Claims Tribunal, Thiruvarur in M.C.O.P.No.4 of 2019, the respondents therein have preferred the appeal in C.M.A.No.2670 of 2022 praying to set aside the award while the petitioner therein has preferred the cross objection in Cross Obj.No.86 of 2023 praying to enhance the compensation.

2. For the sake of convenience, the parties are referred to as per their ranks in the Original Petition.



3. The case of the petitioner is that on 9th August 2018 at about 8.30 p.m., while the petitioner was returning home from his work in his Hero Honda Splendor Plus two-wheeler bearing Reg.No.TN-50-AB-2686 in Thiruvarur to Tanjavur road, 1st respondent's Mahindra Jeep bearing Reg.No.TN-09-G-0553 driven by its driver in a rash and negligent manner in the opposite direction, collided with the petitioner's two-wheeler. Due to the accident, the petitioner sustained fractures on his right thigh, right front leg, right hip and right knee. Initially he was taken to Thiruvarur Medical College Hospital for treatment where first aid was given. Thereafter, the petitioner was admitted in Ganga Hospital, Coimbatore as inpatient from 09.08.2018 to 18.08.2018. Subsequently, the petitioner was again admitted as inpatient in Ganga Hospital, received treatment from 17.12.2018 to 24.12.2018 and also underwent a surgery on 20.12.2018. Hence, the petitioner seeks a compensation of Rs.15,00,000/- under various heads.

4. The respondents filed a counter stating that the accident happened only due to the rash and negligent act of the petitioner. The 1st respondent's vehicle remained unused in the car shed and when the vehicle was taken outside for maintenance purposes, the accident



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happened. There is no chance for speeding in front of the Collector office. The petitioner was in a hurry to go home and he alone is responsible for the accident. The 1st respondent's driver was acquitted from the criminal case observing that the petitioner also contributed to the accident. The petitioner joined his duty as driver after making a full recovery and hence there is no permanent disability and loss of earning. Accordingly, the respondents prayed to dismiss the petition.

5. Before the Tribunal, on the side of the petitioner, the petitioner was examined as P.W.1 and Exs-P1 to P19 were marked. On the side of the respondents, one Moovendhan was examined as R.W.1 and Ex-R1 was marked and the disability certificate was marked as Ex-C1.

6. After hearing both sides, the Tribunal came to the conclusion that the driver of the 1st respondent's vehicle alone was responsible for the accident and, accordingly, fastened the liability on the respondents, allowed the petition and awarded a compensation of Rs.6,28,620/- under the following heads:-

1. Disability	:	Rs.2,19,000.00
2. Loss of income	:	Rs. 15,000.00
3. Pain and suffering	:	Rs. 75,000.00



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4. Extra nourishment	:	Rs. 10,000.00
5. Transport to Hospital	:	Rs. 10,000.00
6. Attender charges	:	Rs. 10,000.00
7. Medical expenses (Bills)	:	Rs.2,78,620.00
8. Loss of cloths & othesr	:	Rs. 1,000.00
9. Loss of Amenities	:	Rs. 10,000.00

Total	:	Rs.6,28,620.00

7. Feeling aggrieved with the said award, the respondents have preferred the appeal in CMA.No.2670 of 2022 while the petitioner has preferred cross objection in Cross Obj.No.86 of 2023 for enhancement of compensation.

8. The learned counsel for the appellants/ respondents submitted that the accident occurred due to the rash and negligent driving of the petitioner/ cross objector. The learned counsel further submitted that the alleged accident occurred in front of the District Collector Office, where it is not possible to drive the vehicle in a rash and negligent manner as alleged by the petitioner. He further submitted that the criminal case registered against the driver of the 1st respondent has ended acquittal. And that the Tribunal has not considered the evidence properly. Accordingly, she prayed to allow the civil miscellaneous appeal.



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9. Per contra, the learned counsel for the petitioner/ cross-objector submitted that due to the accident, the petitioner could not go to work for nine months and he had been suffering from severe pain. The Tribunal did not consider the said fact. He further submitted that the petitioner is a native of Thiruvarur District and he was transported from Thiruvarur to Coimbatore through ambulance for treatment. The Tribunal has awarded a meagre sum of Rs.10,000/- as transportation charges. He further submitted that the Tribunal did not consider the present cost of living and expenses. Accordingly, he prayed to allow the cross objection and enhance the award amount.

10. This Court has considered the submissions made on either side.

11. The petitioner was examined as P.W.1. He deposed about the manner of the accident alleging that the 1st respondent's driver drove in a rash and negligent manner. Though the respondents have submitted that it is not possible to drive the vehicle in a rash and negligent manner in the place of occurrence, the respondents have not adduced any evidence to rebut the deposition of PW1. Hence, this Court comes to the conclusion



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that the Tribunal is right in fixing the responsibility on the respondent.

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12. As far as the quantum of compensation is concerned, admittedly the petitioner received treatment in two spells i.e., from 09.08.2018 to 18.08.2018 and 17.12.2018 to 24.12.2018 at Ganga Hospital, Coimbatore. On 20.12.2018 an operation was performed on him. This Court has perused the discharge summary issued by the Ganga Hospital. It reveals the fact that after the operation the petitioner visited the hospital on 19.02.2019 and on 07.05.2019 for check-up. On 07.05.2019 the Doctor had noted that “fractures united and healed well”. From the above entry it can be perceived that from the date of accident to 07.05.2019, the petitioner could not attend his work. Hence, he has lost income for a period of about nine months. The Tribunal failed to take note of the said fact. The petitioner was working as a temporary driver in Tamil Nadu Medical College and Hospital and was earning a sum of Rs.10,000/-. The petitioner being a driver/skilled labour, earning a sum of Rs.10,000/- per month is quite natural. Hence, this Court awards a sum of Rs.90,000/- [10,000 x 9 months] under the head of loss of income.

13. The Tribunal has awarded a sum of Rs.75,000/- for pain and



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sufferings. Considering the nature of injury, this Court is of the considered view that Rs.1,50,000/- would be a fair and reasonable compensation towards pain and sufferings.

14. As far as extra nourishment is concerned, the Tribunal has awarded Rs.10,000/-, which is a meagre amount. This Court is of the view that a sum of Rs.30,000/- would be reasonable.

15. As far as the transportation charges are concerned the Tribunal has awarded a sum of Rs.10,000/-, which is also on the lower side. Thiruvavarur to Coimbatore is nearly 330 kms. As per the discharge summary the petitioner was admitted from 10.08.2018 to 18.08.2018, and once again from 17.12.2018 to 24.12.2018 in the Ganga Hospital, Coimbatore. Further he went to Ganga Hospital for out-patient treatment on 19.02.2019 and on 07.05.2019. Hence, this Court is of view that awarding a sum of Rs.10,000/- under the above head would be on the lower side. This Court is inclined to award a sum of Rs.50,000/- under the head of transportation charges.

16. As far as the attender charges are concerned, the Tribunal



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awarded a sum of Rs.10,000/-, which is also on the lower side. This Court is of the view that Rs.30,000/- would be a reasonable compensation.

17. As far as loss of cloth is concerned, the Tribunal has awarded a sum of Rs.1,000/-, which is also meagre amount. Hence, this Court is inclined to enhance the same to Rs.5,000/-.

18. As far as the loss of amenities is concerned, considering the nature of injuries and the period of treatment, this Court is inclined to award a sum of Rs.50,000/- as loss of amenities.

19. Accordingly, this Court modifies the amount awarded by the Tribunal as follows:-

<i>Sl. No.</i>	<i>Head</i>	<i>Awarded by the Tribunal</i>	<i>Modified by this Court</i>
1.	Disability	Rs.2,19,000.00	Rs.2,19,000.00
2.	Loss of Income	Rs. 15,000.00	Rs. 90,000.00
3.	Pain and suffering	Rs. 75,000.00	Rs.1,50,000.00
4.	Extra nourishment	Rs. 10,000.00	Rs. 30,000.00
5.	Transportation	Rs. 10,000.00	Rs. 50,000.00



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<i>Sl. No.</i>	<i>Head</i>	<i>Awarded by the Tribunal</i>	<i>Modified by this Court</i>
6.	Attender charges	Rs. 10,000.00	Rs. 30,000.00
7.	Medical expenses	Rs.2,78,620.00	Rs.2,78,620.00
8.	Loss of Clothes	Rs. 1,000.00	Rs. 5,000.00
9.	Loss of Amenities	Rs. 10,000.00	Rs. 50,000.00
	Total	Rs.6,28,620.00	Rs.9,02,620.00

20. Accordingly, the award dated 30.09.2021 passed by the Tribunal in MCOP.No.4 of 2019 is hereby modified and a sum of Rs.9,02,620.00 (Rupees Nine Lakhs Two Thousand Six Hundred and Twenty only) is awarded as compensation. The respondents 1 and 2 are directed to deposit the modified award amount alongwith interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit, less the amount already deposited, if any, within a period of three months from today. The cross objector (petitioner) is directed to pay the difference in Court fee, if any, within a period of fifteen days from the date of receipt of the copy of the order, as per practice.

21. In the result, **CMA.No.2670 of 2022 is dismissed** and **Cross Objection No.86 of 2023 is partly allowed as per para (20).** No costs. Consequently, the connected civil miscellaneous petition is closed.



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Speaking order / Non-Speaking order

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thiruvavarur.



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R.SAKTHIVEL,J.

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