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CMA.No.1683 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1683 of 2023

Suresh

.... Appellant

vs.

1. Mugunthan

2. Divisional Manager

The New India Assurance Company Limited,
Pondicherry Division Office,
TP Claims Hub, 30 JN Street,
II Floor, Pondicherry

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 24.04.2023 in M.C.O.P.995/2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore.

For Appellant : Mrs. Ramya V Rao

R1 : No appearance

For R2 : Ms. A. Salomi



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J U D G M E N T

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The appellant is the claimant in M.C.O.P.995/2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore, and he filed the claim petition under Section 166(1) of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that occurred on 01.01.2017.

2. The case of the claimant is that on 01.01.2017 he was travelling as a passenger in a bus bearing Registration Number TN-49-AT-3124, belonging to the first respondent. The driver of the bus drove the bus in a rash and negligent manner as a result of which the claimant fell down from the bus and sustained injuries all over his body. He was immediately rushed to the Government hospital, Cuddalore, from where he was referred to JIPMER Hospital, Pondichery.

2.1. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration Number TN-49-AT-3124 was the cause of the accident and that since the said bus was insured with the



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second respondent, the New India Assurance Company Limited, Pondicherry, the owner of the bus and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the first respondent, the owner of the bus remained absent and was set *ex parte*. The second respondent insurance company resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal after analysing the evidence on record held that the liability of the owner and the insurer are joint and several and that they should pay compensation of Rs.3,73,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, vide its orders dated 24.04.2023.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.



6. Heard Mrs. Ramya V Rao, learned counsel for the appellant and Ms. A. Salomi, learned counsel for the second respondent/Insurance Company.

7. Mrs. Ramya V Rao, learned counsel for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. She therefore prayed for enhancement of compensation.

8. Per contra, Ms. A. Salomi, learned counsel appearing for the second respondent /Insurance Company contended that the Tribunal had, after analysing the evidence on record, awarded just compensation to the claimant and therefore, the same need not be disturbed in the present appeal.

9. A perusal of the discharge summary (Ex.P5) issued by the JIPMER Hospital, shows that the claimant had sustained 'Right closed I/A Calcanum fracture'. The Medical Board had assessed the disability of the claimant as 42% . Since there is no functional disability, the Tribunal had



awarded as sum of Rs.2,10,000/- towards partial permanent disability by fixing a sum of Rs.5,000/- per percentage of disability. Since the accident took place in the year 2017, awarding Rs.7,000/- per percentage of disability would meet the ends of justice. Hence, a sum of Rs.2,94,000/- (42 x 7000) is awarded towards partial permanent disability.

9.1. According to the claimant, he was working as a Heavy Motor Vehicle driver earning a sum of rs.25,000/- per month. In the absence of income proof, the Tribunal had fixed the notional monthly income of the claimant as Rs.7,000/-. Considering the year of accident, this Court fixes the notional monthly income of the claimant as Rs.10,000/-. On account of the accident, the claimant would have been out of action atleast for six months. Hence a sum of Rs.60,000/- (Rs.10,000/- x 6) is awarded towards loss of earnings.

9.2. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.



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S.No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Partial permanent disability	2,10,000/-	2,94,000/-
2.	Pain and sufferings	60,000/-	60,000/-
3.	Loss of amenities	35,000/-	35,000/-
4.	Extra nourishment	6,000/-	6,000/-
5.	Attender charges	10,000/-	10,000/-
6.	Transportation charges	5,000/-	5,000/-
7.	Loss of income	42,000/- (7000 x 6)	60,000/- 10,000 x 6)
8.	Medical expenses	5,000/-	5,000/-
	Total	3,73,000/-	4,75,000/-

9.3. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,73,000/- to Rs.4,75,000/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced from Rs.3,73,000/- to Rs.4,75,000/-.



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- iii. The appellant / claimant is directed to pay court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of Court fee.
- iv. The second Respondent, the The New India Assurance Company Limited, is directed to deposit the enhanced compensation amount of Rs.4,75,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.995/2017 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Cuddalore, within a period of four weeks from the date of receipt of a copy of this order.
- v. On such deposit being made, the appellant/claimant is at liberty to withdraw the same, after following due process of law.

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Index : Yes/No
Speaking/Non-speaking order
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To

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1. Motor Accident Claims Tribunal,
Special Subordinate Court, Cuddalore.
2. The Divisional Manager
The New India Assurance Company Limited,
Pondicherry Division Office,
TP Claims Hub, 30 JN Street,
II Floor, Pondicherry
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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