



C.M.A.No.3060 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3060 of 2021

Babu

... Appellant

Vs.

1. S.Madan
2. ICICI Lombard General Insurance Co.Ltd.,
No.84 & 85, Arihand Plaza,
1st Floor, Walltax Road,
Chennai – 600 003.

(1st respondent set ex-parte before the Tribunal, hence notice may be dispensed with)

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the amount awarded in M.C.O.P.No.7685 of 2016 dated 07.04.2021 on the file of Motor Accident Claims Tribunal (VI Small Causes Court) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Notice dispensed with vide
endorsement [R1]
Mr.B.Siva Kollappan for R2



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JUDGMENT

The above appeal is filed by the appellant / claimant challenging the compensation awarded by the Motor Accident Claims Tribunal (VI Small Causes Court) Chennai in the Judgment and decree dated 07.04.2021 in M.C.O.P.No.7685 of 2016.

2. In view of the judgment being passed, notice to the first respondent is dispensed with.

3. It is the case of the claimant that, on 11.11.2016 at about 20.30 hours, when the claimant was crossing the road as a pedestrian, at that time an Auto Rickshaw bearing Regn.No.TN-04-AA-9688 driven by its driver belonging to the first respondent had driven the said vehicle in a rash and negligent manner and dashed the appellant, due to which, the claimant sustained grievous injuries all over his body. Claiming compensation in a sum of Rs.10,00,000/-, the claim petition has been filed by the claimant.



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4. Before the Tribunal, the claimant had examined P.W.1 and marked Exs.P.1 to Ex.P.6. On the side of the respondents, they have neither examined any witnesses nor marked any documents and Court document was marked as Ex.C1. After adjudication, the Tribunal awarded a sum of Rs.1,72,000/- as compensation to the claimant to be payable by the second respondent / insurance company. Challenging the same, the appellant / claimant has preferred the present appeal seeking enhancement of compensation.

5. Learned counsel for the appellant / claimant submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent vehicle and the accident is of the year 2016 and at the time of accident, the deceased was aged about 60 years and was earning not less than a sum of Rs.750/- per day, however, the tribunal had taken the notional income of the deceased as Rs.6,000/-, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded



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under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing for the 2nd respondent/ Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and the learned counsel for the second respondent perused the materials available on record.

8. It is discernible from Ex.C1, disability certificate issued by the Medical Board that the independent Doctor assessed the disability at 30%. On a perusal of the injuries sustained by the claimant, reveals that there is no functional disability and the same would not hamper the claimant from doing his day to day work. However, contrary to the



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judgment of the Hon'ble Apex Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr. reported in 2011 (1) SCC 343***, the Tribunal has fixed 30% under the head “Functional disability” by adopting multiplier method which is *per se* unsustainable.

9. A perusal of the impugned award makes it clear that, the Tribunal has adopted multiplier method to arrive at the compensation. However, considering the nature of injuries suffered and the disability, which has a lasting impact on the life of the claimant, this Court is of the considered view that adoption of percentage method would be the proper course and, therefore, this Court is inclined to adopt percentage method to arrive at the compensation to be given to the claimant.

10. However, considering the age and nature of injury sustained by the claimant and the extent of the disability would not really hamper the claimant from discharging his day to day, this Court fixes Rs.5,000/- per percentage of disability. Therefore, the compensation awarded under the head “Functional disability” is modified to Rs.1,50,000/- (30% *



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5000=1,50,000/-).

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11. A sum of Rs.20,000/- and Rs.3,000/- have been awarded under the heads “pain and suffering” and “attender charges” which are on the lower side and the same are enhanced to a sum of Rs.40,000/- and Rs.5,000/- respectively. This Court feels that the compensation awarded under the head “loss of amenities” is not sustainable. Hence the same is rejected. No amount has been awarded under the head “loss of earning during treatment period”, hence a sum of Rs.10,000/- is granted under the said head. This Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference.

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

S.No.	Description	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
1	Functional disability	1,08,000/-	1,50,000/-
2	Pain and sufferin	20,000/-	40,000/-
3	Extra Nourishment	15,000/-	15,000/-
4	Transportation	10,000/-	10,000/-



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<i>S.No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
5	Damages to clothes	1,000/-	1,000/-
6	Attender charges	3,000/-	5,000/-
7	Loss of amenities	15,000/-	-
8	Loss of earning during treatment period	10,000/-	10,000/-
	Total	1,72,000/-	2,31,000/-

13. Accordingly, this Civil Miscellaneous Appeal stands allowed in part and the impugned award passed by the Tribunal in MCOP.No.7685 of 2016 is modified by enhancing the compensation amount from **Rs.1,72,000/-** to **Rs.2,31,000/-**. The second respondent Insurance is directed to deposit the said amount to the credit of MCOP.No. 7685 of 2016 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 award amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks



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thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellant is not entitled to any interest for the default period, if any. No costs.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

- 1.Motor Accident Claims Tribunal (VI Small Causes Court) Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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