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CMA.No.2494 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2494 of 2024

U. Gnanaprakasam

.... Appellant

vs.

1. C. Sardhar
2. The Manager, Branch Office,
National Insurance Company Limited
Third Floor, Anuradha Complex
Bangalore Road, Krishnagiri District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 11.09.2023 in M.C.O.P.591/2018 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Court, Krishnagiri.

For Appellant	: Mr. S. Udhayakumar
R1	: Notice dispensed with.
For R2	: Mrs. R. Rathna Thara



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J U D G M E N T

The appellant is the claimant in M.C.O.P.591/2018 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Court, Krishnagiri, and he filed the claim petition under Section 166 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 06.09.2008.

2. The case of the claimant is that on 06.09.2008 he was walking along Krishnagiri old pet Road and an Auto bearing Registration Number TN-29-U-2620, belonging to the first respondent, came in the opposite direction and hit him as a result of which he fell down and sustained injuries all over his body.

2.1. According to the claimant, the rash and negligent driving of the driver of the Auto bearing Registration Number TN-29-U-2620, was the cause of the accident and that since the said auto was insured with the second respondent, the National Insurance Company Limited,



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Krishnagiri, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the first respondent, the owner of the auto, 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, fastened negligence on the part of the driver of the auto and further held that the owner of the Auto and the insurer are jointly and severally liable to pay compensation of Rs.2,53,000/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 11.09.2023.

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.



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6. Heard Mr. S.Udhayakumar, learned counsel for the appellant and Mrs.R.Rathna Thara, learned counsel for the second respondent Insurance Company.

7. Mr. S.Udhayakumar, learned counsel for the appellant contended that the claimant sustained segmental fracture of both bones on his left leg and that the Medical Board attached to Government Head Quarters Hospital, Krishnagiri assessed the partial permanent disability of the claimant as 35%. However, the Tribunal had awarded a meagre amount of Rs.2,53,000/- towards compensation. He, therefore, prayed for enhancement of compensation.

8. Per contra, Mrs.R.Rathna Thara, learned counsel appearing for the second respondent Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.



9. A perusal of the discharge summary(Ex.P11) issued by

Ganga Hospital, Coimbatore, shows that the claimant was admitted as an inpatient on 12.05.2009 and discharged on 25.05.2009. The Chairman and Joint Director of Health Services Standing Medical Board Government Head Quarters Hospital, Krishnagiri, has issued disability certificate (Ex.C1) stating that the claimant has sustained 35% of partial permanent disability. Since there is no functional disability, multiplier method need not be adopted as far as the present case is concerned. The Tribunal has awarded Rs.1,500/- per percentage of disability. Since the accident took place in the year 2008, awarding a sum of Rs.3,000/- per percentage of disability would meet the ends of justice.

9.1. It is seen from the records that the claimant was aged 54 years at the time of accident. According to him he was working as a cashier and was also as a seasonal businessman and a house broker earning a sum of Rs.15,000/- per month. However, he did not adduce any documentary evidence to show his actual income. In the circumstances, the Tribunal fixed the notional monthly income of the claimant as Rs.4,000/-. Considering the year of accident, this Court fixes the notional



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monthly income of the claimant as Rs.6,000/-. On account of the accident, the claimant would have been out of action atleast for five months. Hence a sum of Rs.30,000/- (Rs.6,000/- x 5) 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.

<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Disability	52,500/- (35 x 1,500)	1,05,000/- (35x3000)
2.	Medical expenses	56,650/-	56,650/-
3.	Pain and sufferings	25,000/-	25,000/-
4.	Transportation expenses	57,600/-	57,600/-
5.	Extra nourishment	7,000/-	10,000/-
6.	Attender charges	8,000/-	10,000/-
7.	Damages to clothes	1,250/-	1,250/-
8.	Loss of Amenities	25,000/-	25,000/-
9.	Loss of Income	20,000/- (4000x5)	30,000/- (6000x5)
	Total	2,53,000/-	3,20,500/-



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9.3. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,53,000/- to Rs.3,20,500/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.2,53,000/- to Rs.3,20,500/-.
- 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, National Insurance Company Limited, Krishnagiri, is directed to deposit the enhanced compensation amount, i.e., Rs.3,20,500/- (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.591 /



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2018 on the file of the Motor Accidents Claims Tribunal/Special Subordinate Court, Krishnagiri, 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.

vi. The appellant/claimant is not entitled to claim any interest for the period of delay of 176 days in filing this appeal, as per the orders of this Court dated 23.08.2024 in C.M.P. No.17169 of 2024.

10.09.2024

Index : Yes/No

Speaking/Non-speaking order

bga

To

1. Motor Accidents Claims Tribunal/Special Subordinate Court, Krishnagiri.
2. The Manager, Branch Office,
National Insurance Company Limited
Third Floor, Anuradha Complex
Bangalore Road, Krishnagiri District.



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3. The Section Officer, VR Section, Madras High Court, Chennai.

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R.HEMALATHA, J.

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