



C.M.A.No.1869 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1869 of 2021
and C.M.P.No.17904 of 2019

Shanthi

... Appellant/petitioner

Vs.

1.K.Jagannathan

*(Since R1 remained exparte before the Tribunal,
his presence may be dispensed with)*

2.ICICI Lombard General Insurance Company Limited,
Arihant Plaza, No.84 & 85,
I Floor, Wall Tax Road,
Parrys Corner,
Chennai – 600 003.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.02.2019 and made in M.A.C.T.O.P.No.4738 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1 Motor Accidents Claims Petitions) Small Causes Court, Chennai.



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For Appellant : Mr.Terry Chella Raja
For Respondents : R1 – No appearance
Mr.B.Sivakollapan for R2

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the injured claimant seeking enhancement of against the award passed in M.AC.T.O.P.No.4738 of 2016 dated 28.02.2019, on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1 Motor Accidents Claims Petitions) Small Causes Court, Chennai.

2.The facts leading to filing of this appeal is as follows:

On 03.07.2016 at about 10.30 a.m., the claimant was travelling in a two wheeler as a pillioner on the Tiruvottiyur High Road, while they reached near Tiruvottiyur Police Station, the rider of a two wheeler bearing Registration No.TN-03-S-3964 came from West to East direction dashed against the petitioner's vehicle which resulted in causing grievous injuries. After taking treatment, she has come forward with a claim petition seeking compensation for a sum of Rs.25,00,000/- under Section 166 of the Motor Vehicles Act.



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3.The first respondent/owner of the vehicle has not contested the claim. The second respondent filed a counter and disputed the manner in which the accident took place and also disputed the disability, age, income and avocation of the claimant.

4.The Tribunal after considering the evidence placed on record has held that the driver of two wheeler belongs to the first respondent, is tortfeasor and the respondents are liable to pay compensation. The Tribunal has quantified the compensation and awarded a sum of Rs.1,62,900/- as compensation payable to the claimant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization.

5.Aggrieved over the quantum of compensation fixed by the Tribunal, more particularly under the head disability, the claimant has come forward with this appeal seeking enhancement of compensation.

6.Learned counsel for the appellant submits that the claimant has



been assessed disability of 35% by the Doctor/P.W.2 and his evidence has not been properly appreciated by the Tribunal and the Tribunal *suo motu* has fixed the disability as 15%, awarded compensation. The compensation awarded per percentage is also on the lower side and prays to enhance the same.

7.Per contra, learned counsel for the Insurance Company submits that based on the discharge summary wherein the nature of injuries and the treatment given, recorded the Tribunal has fixed the disability and the same is proper. The compensation awarded under other heads also are just compensation and prays to confirm the award.

8.I have considered the rival submissions made on both sides and also perused the entire records.

9.To prove the disability, the claimant has examined P.W.2, the Private Doctor, who issued the Disability Certificate Ex.14, he has stated that the claimant has sustained head injury with fracture on the right occipital bone and other injuries. The injuries noted by the Doctor have been corroborated by the accident register, wound certificate, medical legal



register and discharge summary, which were marked as Exs.P2 to P5.

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10.P.W.2 has also given evidence regarding various complications met by the claimant due to head injury with two fractures on the head. The Tribunal has rejected the evidence on the ground that the claimant was assessed the disability two years after the injury.

11.This Court is of the view that the rejection of the disability assessed after two years is not proper and the evidence of P.W.2 is corroborated by various medical records including discharge summary and wound certificate, wherein the treatment given to her has been categorically discussed and also the subsequent complications have been recorded by P.W.2 including the scan report which was marked as Ex.P17.

12.The rejection of the percentage of disability fixed by P.W.2 is not supported any reason and this Court is of the view that the percentage of disability assessed by the Doctor has to be accepted since his evidence is corroborated by other medical records. Accordingly, the percentage of disability 35% is accepted and the claimant is entitled for the compensation for the percentage of disability. However, the disability is not a functional



disability and it is only a partial permanent disability which has not reduced the earning capacity of the claimant herein. The Judgment of this Court in *Chinnatambi vs. Deepa [2020 (1) TN MAC 617]* has held that the accident took place in the year 2016 onwards, a sum of Rs.5,000/- has been awarded by calculating percentage method. Accordingly, under the head disability the compensation per percentage is modified from Rs.3,000/- to Rs.5,000/- and a sum of Rs.1,75,000/- is granted [5,000 x 35%]. Compensation awarded other heads are proper and this Court finds no grounds for enhancements.

13.Thus, the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced
1.	Disability	Rs.45,000/-	Rs.1,75,000/-	Enhanced
2.	Pain and suffering	Rs.20,000/-	Rs.20,000/-	Confirmed
3.	Extra nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Transport charges	Rs.3,000/-	Rs.3,000/-	Confirmed



5.	Medical Expenses	Rs.45,629/-	Rs.45,629/-	Confirmed
6.	Attender Charges	Rs.1,250/-	Rs.1,250/-	Confirmed
7.	Loss of earning during treatment	Rs.18,000/-	Rs.18,000/-	Confirmed
8.	Loss of amenities	Rs.20,000/-	Rs.20,000/-	Confirmed
	Total	Rs.1,62,879/- rounded off Rs.1,62,900/-	Rs.2,92,900/-	Enhanced by Rs.1,30,000/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.1,62,900/- is hereby enhanced to Rs.2,92,900/- [Rupees Two Lakhs Ninety Two Thousand and Nine Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.A.T.O.P.No.4738 of 2016, on the file of the Motor Accidents Claims Tribunal, (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai. On such deposit, the claimant is permitted to withdraw the award



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amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10.01.2024

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

1. The Motor Accident Claims Tribunal,
(Special Sub Court No.1, Motor Accidents Claims Petitions)
Small Causes Court, Chennai.
2. The Section Officer,
VR Section,
High Court, Madras.



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K.RAJASEKAR, J.

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