



C.M.A.No.2674 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 12.03.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2674 of 2022

Krishnakumar

... Appellant

Vs.

1. Usharani

2. ICICI General Insurance Co. Ltd.,
140, 2nd Floor, Nungambakkam,
High Road, Chennai – 600 034.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 23.11.2015 made in M.C.O.P.No.2696 of 2013, on the file of the Motor Accident Claims Tribunal/IV Judge) Court of Small Causes, Chennai.

For Appellant : Mrs.A.Subadra

Respondent-1 : Ex parte

For Respondent-2 : Mrs.R.Sree Vidhya



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JUDGEMENT

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Questioning the quantum of compensation awarded by the Motor Accident Claims Tribunal (hereinafter, referred to as 'the Tribunal') the present Civil Miscellaneous Appeal is filed by the appellant.

2. On 01.04.2021, at about 21.00 hours, when the claimant was travelling as a pillion rider in a two wheeler, bearing Regn.No.-22-BQ-7303, from Kamarajapuram to Medavakkam, while the two wheeler was proceeding at Medavakkam opposite to Murugan Medicals, the rider of the two-wheeler drove the vehicle in a rash and negligent manner and dashed against a pedestrian, due to which, the Pillion rider, claimant herein was thrown away from the vehicle and sustained grievous injury. Hence, the claimant filed a Petition seeking a sum of Rs.10,00,000/- as compensation.

3. The Tribunal, on the basis of oral and documentary evidence, arrived at a conclusion that the accident occurred due to rash and negligent riding of the two wheeler, belonging to the first respondent, and hence, directed the insurer/second respondent to pay a sum of Rs.4,77,500/- as



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compensation to the claimants. The break up details of the compensation awarded by the Tribunal are as follows:-

<i>SL.</i>	<i>Heads</i>	<i>Award</i>
1	Disability	Rs.90,000/-
2	Pain and Suffering	Rs.50,000/-
3	Extra Nourishment	Rs. 5,000/-
4	Transportation	Rs. 3,000/-
5	Damages to Clothes	Rs. 1,000/-
6	Attender Charges	Rs. 3,500/-
7	Medical Expenses	Rs.2,00,000/-
8	Future Medical Expenses	Rs. 25,000/-
9	Loss of Amenities	Rs.1,00,000/-
	Total	Rs.4,77,500/-

4. Mrs.A.Subadra, the learned counsel appearing for the appellant/claimant would submit that in the present Appeal, there is no dispute with regard to the fixation of negligence and liability and the dispute is only in regard to the compensation awarded by the Tribunal towards 'Disability' at a sum of Rs.90,000/-which is on the lower side. The learned counsel submitted due to the accident, the appellant/claimant sustained head injury, resulting in loss of eye sight at 40% and disability at



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25%, therefore, the Tribunal while determining compensation towards 'Disability', ought to have taken the total disability at 65%, but, the Tribunal has taken the Disability only at 30% and determined the compensation by adopting percentage method by fixing a sum of Rs.3,000/- towards per percentage of disability, which has resulted in awarding meager compensation of Rs.90,000/-. Therefore, the learned counsel prayed to re-determine the compensation towards Disability by applying multiplier method and as regards the compensation awarded under other heads, it is fairly admitted that the same is just and fair.

5. Mrs.R.Sree Vidhya, learned counsel appearing for the second respondent/Insurance Company would submit that the compensation awarded by the Tribunal towards Disability is just and reasonable and requires no interference. However, she submitted that if the Court is inclined to re-determine the compensation under the said head, the same may be done by adopting percentage method by taking the disability at 50% and insisted the Court not to adopt multiplier method.



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6. Heard the learned counsel for the appellant/claimant and the learned counsel for 2nd respondent and perused the materials on record.

7. Thus, taking into consideration of the submissions made by the learned counsel appearing for the appellant/claimant, the learned counsel for the second respondent/Insurance Company and on perusal of the records, more particularly, evidence of P.W.2 and P.W.3, viz., Doctors, who examined the appellant/claimant and assessed the disability sustained by him at 40% (i.e. loss of eyesight) and 25% (disability) and issued Disability Certificates, in that regard, which were marked as Exs.P.8 and Ex.P.11 respectively, this Court is of the view that the Tribunal committed an error while determining compensation towards Disability, for, when the Tribunal decided to determine the compensation under the said head by not adopting multiplier method, but by percentage method, it ought to have taken entire disability at 65% and ought not to have reduced the disability at 30%. Therefore, this Court holds that the compensation determined by the Tribunal at a sum of Rs.90,000/- by taking the disability at 30% and fixing Rs.3,000/- per percentage of disability for the accident occurred in the year



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2011 is low. Hence, this Court is inclined to re-determine the compensation towards Disability by taking entire functional disability at 65% and adopting percentage method. Insofar as Rs.3,000/- fixed by the Tribunal towards per percentage of disability is concerned, this Court is inclined to follow the same.

7.1 Thus, the compensation towards Disability is determined in the following manner:-

$$\text{Rs.3,000/-} \times 65\% = \text{Rs.1,95,000/-}$$

7.2 Consequently, the sum of Rs.90,000/- awarded by the Tribunal under the head of 'Disability' is hereby modified and enhanced to **Rs.1,95,000/-**.

7.3 Except the modification made under the head, viz., Disability, the award of compensation passed by the Tribunal under other heads remain unaltered as the same appear to be just and reasonable.



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WEB COPY 8. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-

<i>SL.</i>	<i>Heads</i>	<i>Award</i>
1	Disability	Rs.1,95,000/-
2	Pain and Suffering	Rs.50,000/-
3	Extra Nourishment	Rs. 5,000/-
4	Transportation	Rs. 3,000/-
5	Damages to Clothes	Rs. 1,000/-
6	Attender Charges	Rs. 3,500/-
7	Medical Expenses	Rs.2,00,000/-
8	Future Medical Expenses	Rs. 25,000/-
9	Loss of Amenities	Rs.1,00,000/-
	Total	Rs.5,82,500/-

9. Consequently, the total compensation amount of Rs.4,77,500/- awarded by the Tribunal is hereby modified and enhanced to **Rs.5,82,500/-**, which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.



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10. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the rate of 7.5% p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount directly to the claimant's respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellant/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.



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iv) The appellant/claimant is directed to pay the Court fee for the enhanced compensation, if any.

v) Since this Appeal has been filed with a delay of 2359 days, the appellant/claimant shall forgo the interest for the delay period, as already observed by this Court while condoning the delay, in its order, dated 24.11.2022, made in C.M.P.No.16294 of 2022 in C.M.A.Sr.No.102960 of 2022.

vi) There shall be no order as to costs.

12.03.2024

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To

The IV Judge,
Court of Small Causes,
Motor Accident Claims Tribunal, Chennai

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Krishnan Ramasamy,J.,
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