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Civil Miscellaneous Appeal Nos.1497 & 1499 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.1497 & 1499 of 2024

Minor Harishvaran

S/o.Suresh

(minor represented by his father
and natural guardian Suresh)

... Appellant in
C.M.A.No.1497/2024

Suresh

S/o.Chellappa

... Appellant in
C.M.A.No.1499/2024

Vs.

1.K.N.Jayaraman

S/o.Nallamuthu

2.The Manager,

The Oriental Insurance Company Limited,

135-A MGR Nagar,

Malaisuthi, Thiruchengode Road,

Namakkal District.

... Respondents in both
appeals

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.09.2022 made in M.C.O.P.Nos.67 and 66 of 2019 on the file of Motor Accident Claims Tribunal, Additional Sub Judge, FAC, Hosur, Krishnagiri District.



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Civil Miscellaneous Appeal Nos.1497 & 1499 of 2024

For Appellant : Mr.M.Sivakumar
[in both appeals]

For Respondents : Mrs.R.Sreevidhya [R2]
[in both appeals]

COMMON JUDGMENT

These appeals arise out of a common award passed by the Motor Accident Claims Tribunal, Additional Sub Judge, FAC, Hosur, Krishnagiri District, in M.C.O.P.Nos.67 and 66 of 2019, dated 12.09.2022.

2. The claimant in M.C.O.P.No.66 of 2019 was the rider of the two wheeler and the claimant in M.C.O.P.No.67 of 2019 was the pillion rider and they were travelling through Rayakottai - Hosur road on 10.06.2017 and at about 09.00 a.m., when the vehicle reached Karapalli, the offending vehicle, a bore well lorry, came from the opposite direction in a rash and negligent manner and it dashed the two wheeler as a result of which both the rider and the pillion rider were thrown out of the vehicle.

3. The claimant in M.C.O.P.No.66 of 2019 sustained the following



injuries:

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1. Composite soft tissue loss over the lateral 3, 4, 5th ray dorsum foot and lateral aspect of left leg.
2. Friction burns over the lateral aspect of left leg.
3. Degloving injury right leg anteromedial aspect of middle 1/3rd with skin Necrosis.
4. Laceration over the right eyebrow.
5. Laceration over the lower lip.

4. The claimant in M.C.O.P.No.67 of 2019 sustained deep friction burns over the left leg with soft tissue loss.

5. The claimant in M.C.O.P.No.66 of 2019 underwent treatment as an inpatient for nearly ten days and the claimant in M.C.O.P.No.67 of 2019 underwent treatment as an inpatient for five days. The Medical Board assessed 45% disability insofar as the claimant in M.C.O.P.No.66 of 2019 is concerned and 30% insofar as the claimant in M.C.O.P.No.67 of 2019 is concerned. It is under these circumstances, independent claim petitions came to be filed before the Tribunal seeking compensation.

6. The Tribunal, on considering the facts and circumstances of the



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case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.3,40,420/- [M.C.O.P.No.66 of 2019] and Rs.1,78,780/- [M.C.O.P.No.67 of 2019] under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>M.C.O.P.No. 66/2019 Amount (in Rs.)</i>	<i>M.C.O.P.No. 67/2019 Amount (in Rs.)</i>
1.	Partial loss of income	45,000/-	-
2.	Pain and suffering	50,000/-	30,000/-
3.	Loss of amenities and enjoyment of life	50,000/-	30,000/-
4.	Transport to Hospital	5,000/-	5,000/-
5.	Extra nourishment	5,000/-	5,000/-
6.	Attender charges	2,000/-	2,000/-
7.	Damage to clothing	2,000/-	2,000/-
8.	Medical expenses	36,420/-	14,780/-
9.	Future medical expenses	10,000/-	-
10.	Permanent disability	1,35,000/-	90,000/-
	Total	3,40,420/-	1,78,780/-

The above compensation was directed to be paid along with interest at



7.5% p.a.
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7. The claimants, not being satisfied with the quantum of compensation awarded by the Tribunal, have filed these appeals seeking enhancement of compensation.

8. Heard Mr.M.Sivakumar, learned counsel for appellants/claimants and Mrs.R.Sreevidhya, learned counsel for second respondent insurance company.

9. This Court carefully considered the submissions made on either side and the materials available on record.

10. This Court also carefully went through the award passed by the Tribunal.

11. The bone of contention on the side of appellants/claimants is with regard to the amount fixed per percentage while determining the compensation under the head 'disability'. A submission was also made



regarding the compensation fixed under the other heads contending that it is on the lower side.

12. Insofar as C.M.A.No.1497 of 2014 is concerned, it arises against the award passed in M.C.O.P.No.67 of 2019. In this case, the injuries sustained by the claimant and the percentage of disability has already been taken note of supra. The accident had taken place in the year 2017 and hence, considering the judgment of the Division Bench of this Court in ***C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others]***, this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'permanent disability' is fixed at Rs.2,10,000/- [7000 * 30].

13. The compensation granted under the other heads is justified and does not require the interference of this Court.

14. For the foregoing reasons, the compensation awarded by the



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Tribunal is modified as follows:

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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Partial loss of income	-	-
2.	Pain and suffering	30,000/-	30,000/-
3.	Loss of amenities and enjoyment of life	30,000/-	30,000/-
4.	Transport to Hospital	5,000/-	5,000/-
5.	Extra nourishment	5,000/-	5,000/-
6.	Attender charges	2,000/-	2,000/-
7.	Damage to clothing	2,000/-	2,000/-
8.	Medical expenses	14,780/-	14,780/-
9.	Future medical expenses	-	-
10.	Permanent disability	90,000/-	2,10,000/-
	Total	1,78,780/-	2,98,780/-

15. Insofar as C.M.A.No.1499 of 2014 is concerned, it arises against the award passed in M.C.O.P.No.66 of 2019. In this case, the injuries sustained by the claimant and the percentage of disability has already been taken note of supra. The accident had taken place in the year 2017 and hence, considering the judgment of the Division Bench of



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this Court in ***C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others]***, this Court is inclined to fix a sum of Rs.7,000/- per percentage. Accordingly, the compensation under the head 'permanent disability' is fixed at Rs.3,15,000/- [7000 * 45].

16. The only other head that requires the consideration of this Court is regarding the compensation fixed under the head 'loss of income'. The Tribunal has fixed a sum of Rs.45,000/- under this head [9000 x 5]. Considering the fact that the claimant in this case was working in a private company and claimed that he was earning a sum of Rs.40,000/- p.m., this Court is inclined to fix the notional monthly at Rs.12,000/- Accordingly, the compensation under the head 'loss of income' is determined at Rs.60,000/- [12000 x 5].

17. The compensation granted under the other heads is justified and does not require the interference of this Court.

18. For the foregoing reasons, the compensation awarded by the



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Tribunal is modified as follows:

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<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Partial loss of income	45,000/-	60,000/-
2.	Pain and suffering	50,000/-	50,000/-
3.	Loss of amenities and enjoyment of life	50,000/-	50,000/-
4.	Transport to Hospital	5,000/-	5,000/-
5.	Extra nourishment	5,000/-	5,000/-
6.	Attender charges	2,000/-	2,000/-
7.	Damage to clothing	2,000/-	2,000/-
8.	Medical expenses	36,420/-	36,420/-
9.	Future medical expenses	10,000/-	10,000/-
10.	Permanent disability	1,35,000/-	3,15,000/-
	Total	3,40,420/-	5,35,420/-

19. Insofar as C.M.A.No.1497 of 2024 [M.C.O.P.No.67 of 2019] is concerned, the compensation awarded by the Tribunal at Rs.1,78,780/- is enhanced to Rs.2,98,780/-. Insofar as C.M.A.No.1499 of 2024 [M.C.O.P.No.66 of 2019] is concerned, the compensation awarded by the Tribunal at Rs.3,40,420/- is enhanced to Rs.5,35,420/-.

20. The second respondent insurance company is directed to



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deposit the compensation awarded by this Court, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 171 days as was ordered by this Court in C.M.P.No.20866 in C.M.A.Sr.No.112410 of 2023 and C.M.P.No.20857 of 2023 in C.M.A.Sr.No.112409 of 2023 dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, these Civil Miscellaneous Appeals are partly allowed.

No costs.

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Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To



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The Motor Accident Claims Tribunal,
Additional Sub Judge, FAC,
Hosur, Krishnagiri District.

N.ANAND VENKATESH, J.



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