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CMA.No.2613 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2613 of 2024

K. Sathish

.... Appellant

vs.

1. K. Govinthasamy

2. M/s. New India Assurance Company Limited,
Motor Third Party claims Hub,
Bombay Mutual Building,
6th Floor, No.223, N.S.C. Bose Road,
Chennai 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 06.07.2024 in M.C.O.P.224/2022 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr. K. Balaji

R1 : No appearance

For R2 : Mr.A. Salomi



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JUDGMENT

The appellant is the claimant in M.C.O.P.224/2022 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.42,00,000/- for the injuries sustained by him in a road accident that occurred on 27.11.2021.

2. The case of the claimant is that on 27.11.2021, he was riding his two wheeler bearing Registration number TN-19-AL-9050 on Karunila-Singaperumal Koil Road and at about 20.45 hours, a speeding two wheeler bearing Registration Number TN-19-BY-7049 hit the two wheeler driven by the claimant as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to a nearby hospital.

2.1. According to the claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration Number TN-19-BY-7049 was the cause of the accident and that since the said motorcycle was



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insured with the second respondent, the New India Assurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal the owner of the offending motorcycle 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 rider of the two wheeler bearing Registration Number TN-19-BY-7049 and directed the second respondent Insurance Company to pay compensation of Rs.2,38,200/- 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. The Tribunal further held that the liability of the owner of the offending motorcycle and the insurance company is joint and several.



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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.

6. Heard Mr. K. Balaji, learned counsel appearing for the appellant and Mr.A. Salomi, learned counsel appearing for the second respondent/Insurance Company.

7. Mr. K. Balaji, learned counsel for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. He, therefore, prayed for enhancement of the same.

8. Per contra, Mr.A. Salomi, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal, after analysing the evidence on record, had awarded just compensation and therefore the same need not be disturbed in the present appeal.



9. A perusal of the records shows that the claimant sustained

"Grade III crush injury right foot 2nd, 3rd, 4th, 5th metatarsal fracture with 2nd 3rd toe extensor tendon injuries". The Medical Board attached to the Government Royapettah Hospital, Chennai, assessed the partial permanent disability of the claimant as 25%. Since there is no functional disability, the Tribunal awarded a sum of Rs.1,25,000/- towards partial permanent disability by fixing a sum of Rs.5,000/- per percentage of disability. The claimant was aged 34 years on the date of accident. Considering the age of the claimant and the year of accident, a sum of Rs.8,000/- per percentage of disability is awarded. Hence, a sum of Rs.2,00,000/- is awarded towards partial permanent disability.

9.1. According to the claimant he was a welder by profession earning a sum of Rs.25,522/- per month. The claimant, in order to substantiate his income, has adduced statement of accounts (Ex.P10 and Ex.P11) issued by the City Union Bank, which show that the claimant was receiving a salary of around Rs.20,000/- per month. In the circumstances, fixing the monthly income of the claimant as Rs.20,000/- would meet the ends of justice. On account of the accident, the claimant would have



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been out of action atleast for six months and therefore, a sum of Rs.1,20,000/- (20,000x6) is awarded towards loss of income.

9.2. The following tabular column would show the amount awarded by the Tribunal and the 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.	Partial permanent disability	1,25,000/- (25x5000)	2,00,000/- (25x8000)
2.	Pain and sufferings	20,000/-	50,000/-
3.	Transportation	4,000/-	10,000/-
4.	Medical expenses	49,600/-	49,600/-
5.	Extra nourishment	10,000/-	20,000/-
6.	Attender charges	3,600/-	10,000/-
7.	Damages to clothes	1,000/-	1,000/-
8.	Loss of amenities	10,000/-	10,000/-
9.	Loss of income	15,000/-	1,20,000/- (20000x6)
		2,38,200/-	4,70,600/-



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9.3. Thus, the compensation awarded by the Tribunal is enhanced to Rs.4,70,600/- that 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 to Rs.4,70,600/-.
- 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, the New India Assurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of Rs.4,70,600/- (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



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M.C.O.P.224/2022 on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading 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.

29.10.2024

Index : Yes/No
Speaking/Non-speaking order
bga
To

1. Motor Accident Claims Tribunal, III Court of Small Causes, Chennai
2. M/s. New India Assurance Company Limited,
Motor Third Party claims Hub,
Bombay Mutual Building,
6th Floor, No.223, N.S.C. Bose Road,
Chennai 600 001.
3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

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