



C.M.A.No.1298 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM :

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

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Venkatesan

... Appellant

Versus

1.M.Harikrishnan

2.Reliance General Insurance Company Ltd.,
No.6, 4th floor, Haddows Road,
Nungambakam,
Chennai – 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order made in M.C.O.P.No.4770 of 2016, dated 02.04.2019, on the file of the Motor Accident Claims Tribunal, Chennai (in the II Court of Small Causes, Chennai).

For Appellants : Mr.Amar Pandiya

For R2 : Mr.E.Rajadurai for
M/s.M.B.Gopalan Associates.

For R1 : No Appearance.



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JUDGMENT

WEB COPY This appeal is directed as against the award of the Motor Accident Claims Tribunal, Chennai in M.C.O.P.No.4770 of 2016, dated 02.04.2019.

2. It is shortly stated that on 20.04.2016 at about 15.45 hours, the petitioner was riding a Motor cycle bearing Reg.No.TN-05-BD-9374 properly wearing his helmet and was proceeding from East to West. While he was waiting for the signal to turn towards North at Krishna Nagar Main road, Andal Avenue Junction, Thiru. Vi.Ka.Nagar, Chennai, the offending vehicle namely Tata Indica Car bearing Reg.No.TN-11-C-7792 proceeding towards the same direction, driven in a rash and negligent manner, with over speed, without following traffic rules dashed against the petitioner's Motor cycle due to which the petitioner was thrown out and sustained fracture on the Right Leg and suffered multiple grievous injuries all over the body. Immediately he was taken to Government Stanley Hospital, Chennai and thereafter, to Appollo Hospital, Chennai and he had taken treatment from other private hospital at Chennai. At the time of accident, the claimant/injured was working as Crane Operator at SANCO CSF Company, Tiruvotriyur, Chennai and



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was earning a sum of Rs.20,000/- per month. In the said accident, the claimant suffered grievous injury on his right leg and his 4th toe was amputated. Hence, the claimant/injured claimed for compensation from the respondents, being the owner and insurer of the Tata Indica Car bearing Reg.No.TN-11-C-7792, who are statutorily liable to pay compensation for the injuries sustained by the claimant. In the claim petition a sum of Rs.20,00,000/- was claimed as compensation for the injuries suffered by the claimant/injured.

3. The 1st respondent remained *exparte* before the Tribunal.

4. The 2nd respondent/Insurance Company resisted the claim petition and alleged that the accident took place on 20.04.2016 whereas the FIR was registered only on 20.05.2016. Hence, there is an inordinate delay of 30 days in lodging the complaint which causes a serious suspicion that whether Car bearing Reg.No.TM-11-C-7792 was involved in the alleged accident. It is submitted that the petitioner has falsely implicated the said vehicle with an ulterior motive to enrich himself from the Insurance Company. Further, the contention of the 2nd respondent is that the age, occupation and income of the petitioner as stated in the



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petition are not true. It is also submitted that the compensation claimed by the petitioner is highly exorbitant and prays for dismissal of the above petition.

5. The Tribunal framed the following points for determination that are extracted as here under:

- 1) Whether the accident has occurred due to rash and negligence act of the Car bearing Reg.No.TN-11-C-7792?*
- 2) Whether the Petitioner is entitled to claim compensation from the Respondents 1 and 2?*
- 3) What is the quantum of compensation that the petitioner is entitled to under various heads claimed by him?*
- 4) Whether the Petitioner is entitled to interest and if so at what rate of interest and from which date?*
- 5) To what other relief the Petitioner is entitled to?*

6. The Motor Accident Claims Tribunal has come to the conclusion that accident took place as alleged in the claim petition and the claimant/injured is entitled for a sum of Rs.97,000/- as compensation for the injury sustained by him in the said Motor accident which took



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place on 20.04.2016, payable by the 2nd respondent/Insurance Company with interest at the rate of 7.5% per annum from the date on which the petition was taken on file till the date of deposit.

7. Through this appeal the award has been challenged only on the ground of quantum.

8. According to the appellant/claimant the Tribunal has fixed the disability at 3% and awarded only Rs.10,000/- under the head disability which is very meagre, inspite of the deposition by P.W1, the appellant herein and the testimony of P.W2 (Doctor) who deposed that the appellant/claimant is unable to do his work as before because of the injury sustained by him. The Tribunal ought to have adopted the multiplier method while awarding compensation under the head disability. Though the appellant has not lost his job, had lost one of his toe and the award of Rs.10,000/- under the head of disability is very low

9. It is further submitted that the compensation awarded under the heads pain and sufferings, transportation, future medical expenses, loss of amenities, loss of earning and nourishment are very meagre and it



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has to be enhanced for arriving at a just compensation.

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10. There is no dispute with regard to the place of accident as alleged by the claimant. But for rash and negligent driving of the vehicle, the accident would not have taken place and therefore, the findings recorded by the Tribunal in this regard is sustained. There is dispute with regard to compensation awarded by the Tribunal on different heads which are alone challenged before this Court. Admittedly, the accident took place in the year 2016. It is also not in dispute that the appellant was working as Crane Operator in a private Company.

11. As per Ex.C.1, the claimant sustained injury on his right leg which resulted in amputation of the 4th toe on the right leg. The petitioner has examined P.W.2 Doctor M.K.J.Mathiazhagan who issued Ex.P13 disability certificate stating that 3% disability is caused to the petitioner. Accordingly, the Tribunal has fixed the disability at 3% and awarded a sum of Rs.10,000/- for the disability caused to the claimant. Since the accident has taken place in the year 2016, I am inclined to enhance to Rs.5000/- per percentage i.e., $\text{Rs.5000} \times 3\% = \text{Rs.15,000/-}$.

12. The learned counsel appearing for the appellant would



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submit that due to the said amputation of the toe on the right leg of the claimant, he was unable to work for 3 months and therefore, the claimant suffered loss of income during the relevant period. However, the Tribunal failed to award compensation for loss of income during the said period. On perusal of the medical records marked as Ex.P.2 to P.5 and also taking note of the injuries as reflected in the discharge summary, I am inclined to award a sum of Rs.12,000/- for loss of income during the said period. The Tribunal has awarded a sum of Rs.67,000/- towards Medical expenses based on Ex.P.5 medical bills and the same is confirmed.

13.The Tribunal has awarded a sum of Rs.5000/- towards pain and sufferings. Considering the nature of the injury and amputation of toe, I am inclined to enhance to Rs.20,000/- towards pain and sufferings. On perusal of records, it is seen that no amount is awarded under the head of loss of amenities which the Tribunal ought to have considered. Hence, a sum of Rs.10,000/- is awarded towards loss of amenities and towards extra nourishment Rs.10,000/- is awarded. The award of the Tribunal under other heads such as Transportation and attender charges is confirmed.

14. Therefore, this Court finds it reasonable to enhance the



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compensation under various heads, which are as follows:

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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	10,000	15,000	Enhanced
2.	Pain and sufferings	5,000	20,000	Enhanced
3.	Medical Expenses	67,000	67,000	Confirmed
4.	Transportation	5,000	5,000	Confirmed
5.	Attender Charges	5,000	7,000	Confirmed
6.	Loss of Amenities	-	10,000	Granted
7.	Extra Nourishment	5,000	10,000	Enhanced
8.	Loss of Income	-	12,000	Granted
	Total	97,000	1,46,000	Enhanced by Rs.49,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.97,000/- is hereby enhanced to Rs.1,46,000/- together with interest at 7.5% per annum from the date of petition till the date of deposit. The 2nd 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 four (4) weeks from



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the date of a receipt of copy of this Judgment. On such deposit the appellant is permitted to withdraw the entire amount awarded by the Tribunal along with interest and cost, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any for the enhanced award amount. No costs.

30.01.2024

dpa/vsn

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The II Court of Small Causes,
The Motor Vehicle Accident Tribunal,
Chennai

2.The Section Officer,
VR Section,
High Court, Madras.

K.GOVINDARAJAN THILAKAVADI,J.

Dpa/vsn



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