



C.M.A.No.3110 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 14.02.2024

**Coram
The Hon'ble Mr.Justice Krishnan Ramasamy**

C.M.A.No.3110 of 2023

Thangasami

... Appellant

Vs.

1. Surendra Mallya

2. The Manager,
United India Insurance Company Ltd.,
Silingi Building 4th Floor,
No.134, Greams Road, Chennai – 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 15.06.2023 made in M.C.O.P.No.5553 of 2018, on the file of the Motor Accident Claims Tribunal/II Judge, Small Causes Court, Chennai.

For Appellant : M/s.S.R.Suga
For Respondent-1 : Mr.T.Naveen Chandar
For Respondent-2 : Mr.K.Swaminathan



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JUDGEMENT

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This Civil Miscellaneous Appeal is preferred by the claimant, aggrieved by the award passed by the Motor Accident Claims Tribunal cum II Small Causes Court, Chennai, in M.C.O.P.No.5553 of 2018, (hereinafter, referred to as 'the Tribunal') dated 15.06.2023.

2. On 22.04.2018, at about 16.30 hours, when the petitioner/claimant was standing at the Kamarajar Salai, Kodungaiyur, in front of D.No.23/10 Lals Tea Shop, a Car bearing Regn.No.TN 05-Q-2588, driven by its driver came from East to West direction in a rash and negligent manner and hit against the petitioner/claimant, due to which, the petitioner/claimant sustained grievous injuries. Hence, the petitioner filed a Claim Petition seeking a sum of Rs.30,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the Driver of the first respondent's Vehicle, and hence, directed the second respondent/Insurance Company to pay a compensation of



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Rs.4,10,000/- to the claimant together with interest at the rate of 7.5% p.a.

from the date of filing of the Petition and till the date of realisation and to recover the same from the first respondent owner of the offending Vehicle.

The break up details of the award passed by the Tribunal under various is as follows

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Income due to Disability	Rs.2,20,000/-
2	Pain and Sufferings	Rs. 50,000/-
3	Loss of earning during treatment period	Rs. 50,000/-
4	Medical Expenses	Nil
5	Loss of Amenities	Rs. 50,000/-
5	Attender's Charges	Rs. 20,000/-
6	Transportation	Rs. 10,000/-
7	Extra Nourishment	Rs. 10,000/-
Total		Rs.4,10,000/-

4. Aggrieved over the award passed by the Tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation.



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5. Since the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

6. M/s.S.R.Suga, the learned counsel appearing for the appellant/claimant submitted that due to the accident, the claimant sustained both bone fracture of left leg, compound grade III bone, Fracture of Left Bimallelor and multiple injuries all over the body, that though the Medical Board issued a Disability Certificate, which has been marked as Ex.C.1, wherein, the disability was assessed at 44%; however, due to both bone fracture of left leg sustained by the appellant/claimant, he is not in a position to continue his job as a Tile layer, as due to the said disability, he cannot bend his knees, which, his nature of employment requires so, whereas, the Tribunal, while determining compensation under the head, 'Loss of Income due to Disability' without taking into consideration of all these aspects, proceeded to award compensation by adopting percentage method and fixed a sum of Rs.5,000/- towards per percentage of disability,



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which has resulted in awarding an inadequate compensation of Rs.2,20,000/- under the said head. Hence, the learned counsel prayed to re-determine the compensation awarded by the Tribunal towards Disability by adopting multiplier method.

6.1 The learned counsel would also submit that the compensation awarded by the Tribunal under other heads also not adequate, and sought for proper enhancement of the compensation amount.

7. Mr.K.Swaminathan. Learned counsel for the second respondent/Insurance Company would submit that the Court may award any reasonable compensation, which it deems to be just and fair.

8. I have given due consideration to the submissions made by the learned counsel appearing for the appellant and learned counsel for the respondents and perused the materials available on record.

9. When the Appeal was taken up for hearing on the last occasion,



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i.e. on 07.02.2024, the injured appellant/claimant was directed to appear before this Court on 14.02.2024 (i.e. today) so as to find out whether the disability sustained by the appellant at the time of the accident still persists as on date. Accordingly, the appellant/claimant has appeared before this Court today. It is apparent that there is bent on his left leg below knee, due to which, the appellant could not bend his knee and sit freely and therefore, as rightly submitted by the learned counsel appearing for the appellant/claimant due to such disablement, the appellant cannot carry out his job, since his nature of work (i.e. Tile Layer) requires physical labour of bending his knees often, which, certainly, the appellant cannot do.

10. Therefore, the this Court is of the view that the Tribunal ought to have taken into consideration of the aforesaid aspects and awarded compensation by adopting multiplier method instead of applying percentage method. Insofar as the percentage of disability sustained by the appellant is concerned, though as per Ex.C.1, Disability Certificate, the appellant sustained 44%, which is no doubt true, a permanent disability, which would persists throughout his lifetime, however, this Court is inclined to take



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disability at 20% inasmuch as, the compensation awarded by the Tribunal towards Disability is re-determined by this Court by adopting multiplier method.

10.1 Hence, taking into consideration of the age (44 years), avocation (Tile Fixing Work) and year of the accident (2018) this Court is inclined to fix a sum of Rs.14,000/- as notional monthly income of the appellant at Rs.14,000/-in the absence of income proof.

10.2 Thus, by fixing the notional monthly income of the appellant at Rs.14,000/-; adding 25% towards future prospects; applying right multiplier of '14' (since the injured was aged 44 years) and disability at 20%, the compensation towards ' Disability' is calculated as under:-

Notional Monthly income + 25% future prospects x 14 Multiplier x 12 x 44% Disability

$$\text{Rs.14,000/-} + \text{Rs.3,500/-} \times 14 \times 12 \times 20/100 = \text{Rs. 5,88,000/-}.$$

10.3 Consequently, the sum of Rs.2,20,000/- awarded by the



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Tribunal towards 'Disability' is modified and enhanced to **Rs.5,88,000/-**.

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10.4 So far as the compensation awarded by the Tribunal under the head, 'Loss of earning during Treatment' is concerned, the award passed by the Tribunal at Rs.50,000/- is modified and enhanced to (Rs.14,000/- x 5months) Rs.70,000/-.

10.5 Similarly, the compensation awarded by the Tribunal under the two heads, viz., 'Attender's Charges' at Rs.20,000/- and Extra Nourishment' at Rs.10,000/- is concerned, the same stands modified and enhanced to Rs.30,000/- and Rs.20,000/- respectively.

10.6 Further, this Court finds that no compensation was awarded by the Tribunal towards 'Future Medical Expenses', and hence, a sum of Rs.20,000/- is awarded under the said head.

10.7 Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.



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10.8 Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Income due to Disability	Rs. 5,88,000/-.
2	Pain and Sufferings	Rs. 50,000/-
3	Loss of earning during treatment period	Rs. 70,000/-
4	Medical Expenses	Nil
5	Loss of Amenities	Rs. 50,000/-
5	Attender's Charges	Rs. 30,000/-
6	Transportation	Rs. 10,000/-
7	Extra Nourishment	Rs. 20,000/-
8	Future medical expenses	Rs. 20,000/-
Total		Rs.8,38,000/-

10.9 Consequently, the total compensation amount of **Rs.4,10,000** awarded by the Tribunal is hereby modified and enhanced to **Rs.8,38,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit. As far as the pay and recover theory



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ordered by the Tribunal is concerned, the same also stands confirmed.

WEB COPY 11. 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 equally 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 second respondent/Insurance Company, the Tribunal shall transfer the amount directly to the claimant's respective bank account 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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WEB COPY iv) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

14.02.2024

To

The II Judge, Small Causes Court,
Motor Accident Claims Tribunal, Chennai.



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Krishnan Ramasamy,J.,

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