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C.M.A.No.632 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.632 of 2024

P.Uday Kumar

... Appellant

..Vs..

1.B.Janakiraman

2.Reliance General Insurance Company Limited,
Reliance House, 6th Floor,
Haddows Road, Nungambakkam,
Chennai - 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the decree and judgment dated 27.09.2022 in M.C.O.P.No.7051 of 2016 passed by the Motor Accidents Claims Tribunal (Small Causes Court No.IV), Chennai.

For Appellant : Mr.S.Parthasarathy

R1 : Ex parte

For R2 : Mr.P.Suresh Srinivasan

JUDGMENT

The appellant is the claimant in M.C.O.P.No.7051 of 2016 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small



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Causes, Chennai. He filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.25,00,000/- for the injuries sustained by him, in a road accident that took place on 16.10.2016.

2. The brief case of the appellant/claimant is as follows:

2.1. On 16.10.2016, at about 7.30 p.m., the appellant / claimant was walking along Ennore Express Road. When he was nearing Ondikuppam bus stop, Thiruvottriyur, a two wheeler bearing Registration No. TN 18 AH 9775, belonging to the first respondent came with a high speed and hit the appellant from behind, as a result of which, he sustained grievous injuries. He was immediately rushed to Stanley Government Hospital, Chennai, and was treated as an in-patient for 25 days.

2.2. According to the claimant, the rash and negligent driving of the driver of the two wheeler bearing Registration No.TN 18 AH 9775 was the cause of the accident and that since the said vehicle was insured with the second respondent, the Reliance General Insurance Company Limited, the owner and the insurer of the two wheeler are jointly and



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severally liable to pay compensation to him.

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3. In the Tribunal, the first respondent remained absent and was set *ex parte*. The second respondent 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, awarded compensation of Rs.1,06,200/- together with interest at the rate of 7.5% per annum to the appellant / claimant from the date of the petition till the date of realisation, vide his orders dated 27.09.2022. The Tribunal also held that the liability of the owner and the insurer is joint and several.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

6. Heard Mr.S.Parthasarathy, learned counsel for the appellant and Mr.P.Suresh Srinivasan, learned counsel for the second respondent.



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7. Mr.S.Parthasarathy, learned counsel for the appellant contended that the Tribunal awarded only Rs.5,000/- per percentage of disability which is on the lower side. He also contended that this Court directed the Medical Board at Kilpauk Medical College and Hospital, Kilpauk, Chennai, to reassess the disability and accordingly, the Medical Board issued the certificate stating that the partial permanent disability of the claimant is 6%. He also relied on the decision of the Division Bench of this Court in *Arputha Selvan vs. K.Jesudoss and another* in C.M.A. 2104 of 2021 dated 07.03.2022 and contended that a sum of Rs.2,00,000/- should be awarded for removal of spleen. He therefore, prayed for overall enhancement of compensation.

8. Per contra, Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent / the Reliance General Insurance Company Limited contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.



9. The Medical Board had initially assessed the partial permanent disability of the claimant as 3%. However, this Court on 27.03.2024 passed the following orders :

" The learned counsel for the Appellant submitted that due to the accident that occurred on 16.10.2016, the Appellant suffered fractures in head, left leg below knee and crush injury in stomach and multiple injuries all over the body and that apart his spleen was also removed, but the Medical Board viz., Regional Medical Board, Government Stanley Medical College Hospital, which examined the Appellant/Claimant has assessed disability only @ 3% and therefore the learned counsel for the Appellant requested this Court to once again refer the Appellant/Claimant to some other Medical Board for reassessing the disability.

2. Considering the submissions made by the learned counsel for the Appellant/Claimant, this Court directs the Appellant/Claimant to appear before the Medical Board at Kilpauk Medical College and Hospital, Kilpauk, Chennai- 600 010. The Board is directed to examine the Claimant thoroughly and thereafter assess the disability. The Board is also directed to find out whether his Spleen was removed due to the aforesaid accident and thereafter assess the disability. The said



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exercise shall be carried within a period of four weeks from the date of receipt of a copy of this order. The Appellant/Claimant is also directed to produce whatever medical records that is available with him with regard to the injury that he has suffered during the accident before the Medical Board for their perusal, understanding and appreciation of the same. The Dean of the Kilpauk Medical College and Hospital is directed to provide all assistance for constitution of the Medical Board, if not already constituted, so as to assess the disability of the Appellant/Claimant."

Accordingly, the Medical Board at Kilpauk Medical College and Hospital, Kilpauk, Chennai, issued a partial permanent disability certificate stating that the disability of the claimant is 6%.

10. There is no dispute with regard to fixing notional income of the appellant as Rs.9,000/- per month. Since there is no functional disability, the claimant can be given a sum of Rs.5,000/- per percentage of disability. The Division Bench of this Court in *Arputha Selvan vs. K.Jesudoss and another* (cited supra) had awarded a sum of Rs.2,00,000/- for removal of spleen. The following tabular column would show the enhanced award amount under various heads :



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S.No	Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Disability	15,000/-	30,000/-
2.	Medical Expenses	10,170/-	10,170/-
3.	Pain and sufferings	20,000/-	20,000/-
4.	Transportation expenses	5,000/-	5,000/-
5.	Extra nourishment	10,000/-	10,000/-
6.	Damages to clothes	1,000/-	1,000/-
7.	Attendant charges	10,000/-	10,000/-
8.	Loss of amenities	25,000/-	25,000/-
9.	Mental agony	10,000/-	10,000/-
10.	Removal of spleen	-	2,00,000/-
11.	Loss of income	18,000/- *	18,000/-
Total (*Actual total amount Rs.1,24,170/-)		1,06,170/- comes around to Rs.1,06,200/-	3,39,170/-

* Though loss of income for a period of two months is awarded
the same is not added in the total compensation by the Tribunal.



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11. Thus the compensation awarded by the Tribunal is enhanced from Rs.1,06,200/- to Rs.3,39,170/- which would carry interest at the rate of 7.5% per annum.

12. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.1,06,200/- to Rs.3,39,170/-.
- iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- iv. The second respondent, the Reliance General Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount i.e., Rs.3,39,170/- (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 M.C.O.P.No.7051 of 2016 passed by the Motor Accidents Claims Tribunal (Small Causes Court No.IV), Chennai within a period of



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four weeks from the date of receipt of a copy of this order.

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y. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

13.08.2024

Index : Yes/No

Internet : Yes/No

mtl

To

1. The IV Judge, Small Causes Court,
Motor Accident Claims Tribunal, Chennai.
2. M/s.The New India Assurance Co. Ltd.,
No.232,, Bombay Mutual Buildings,
6th Floor, NSC Bose Road,
Parrys, Chennai 600 001.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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