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C.M.A.No.2216 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Civil Miscellaneous Appeal No.2216 of 2019

Dharumaian

... Appellant

Vs.

1.Mohanraj

2.The Branch Manager,
The National Insurance Company Limited,
No.63, Mela Pradhakshanam Road,
Karur Town,
Karur Town and District.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 22.01.2018 in MCOP. No.60 of 2016 on the file of the Motor Accident Claims Tribunal (the Chief Judicial Magistrate) at Nagapattinam.

For Appellant : Mrs.Saranya

for M/s. .T.P.Kuilmozhi

For Respondents : Mr.Michael Viswasam for R2

JUDGMENT



C.M.A.No.2216 of 2017

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal, has filed the present appeal against the award passed by Motor Accident Claims Tribunal dated 22.01.2018 in MCOP. No. 60 of 2016 on the file of the Motor Accident Claims Tribunal (the Chief Judicial Magistrate) at Nagapattinam.

2. The case of the claimant is that on 05.06.2014 at about 07.15 pm, when he was travelling as a pillion rider in a motorcycle near Tamilpal Ravi Shop in Vedaranyam Petrol Bunk, the first respondent's lorry bearing Regi.No.TN 47 P7884 came in a rash and negligent manner and dashed against the motorcycle. As a result of which, the claimant has sustained right leg BK amputation.

3. The claimant underwent treatment as an in patient for two days. The medical board assessed 60% permanent disability, considering the nature of injury sustained by the claimant. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4. The Tribunal on considering the facts and circumstances of the 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 lorry driver. Having rendered such a finding, the Tribunal found that the claimant had travelled in a two wheeler along with other two persons and the rider of the two wheeler has not produced any valid driving license and also insurance policy for the vehicle and therefore, 50% contributory negligence was attributed against the claimant.

5. The Tribunal thereafter proceeded to fix the total compensation at Rs.2,16,000/- under various heads as follows :-

<i>Sl.No</i> <i>.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	1,80,000
2.	Pain and Sufferings	30,000
3.	Transportation	3,000
4.	Extra Nourishment	3,000
	Total	Rs.2,16,000

6. Out of the above amount, 50% was attributed towards contributory negligence and the insurance company was directed to pay a sum of Rs.1,08,000/- with interest at the rate of 7.5% per annum.

7. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.



8. The learned counsel for the appellant submitted that the injured was aged about 40 years at the time of the accident and he was working as a coolie.

Due to the accident, he is not able to continue his avocation. The medical board assessed the disability at 60% whereas the Tribunal has awarded a sum of Rs.1,80,000/- towards disability which is very meager and also the Tribunal has awarded very less compensation in respect of extra nourishment, pain and suffering and transportation during treatment period. Further, the Tribunal ought to have considered the fact that the appellant was only a pillion rider and ought not to have deducted 50% of the compensation towards contributory negligence.

9. Heard the learned counsel for appellant/claimant and the learned counsel for 2nd respondent.

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

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

12. The Tribunal on considering the evidence available on record came to a categorical conclusion that the accident had taken place only due to the rash and negligent driving on the part of the lorry driver. After having rendered such a



finding, the Tribunal found that the claimant travelled in a two wheeler along with two other persons and he has not produced any valid driving licence and also insurance policy for the vehicle and on that ground, the Tribunal attributed 50% contributory negligence against the claimant. The appellant has sustained right leg BK amputation. It is pertinent to note that there is absolutely no material to show that the rider of the two wheeler not possessing a valid driving license, had also contributed to the accident. Therefore, the Tribunal was not right in attributing 50% contributory negligence against the claimant who travelled as a pillion rider. Hence, the finding of the Tribunal is hereby interfered and the same is reduced to 20%.

13. On perusal of the discharge summary, the claimant sustained *right leg BK amputation*. The medical board assessed the disability at 60% as permanent disability. As per the decision of the Hon'ble Apex Court in the case of *Rajkumar Vs. Ajaykumar*, the claimant has to prove, after the accident he could not continue his employment. The Tribunal has fixed a sum of Rs.3,000/- as notional income, which is very meagre.

14. The accident had taken place in the year 2014 and therefore, this Court is inclined to fix a sum of Rs.10,000/- as notional income and the compensation under the head of disability is calculated as follows:



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Notional Income : Rs.10,000/-

Add: Future Prospects : Rs.4,000/-

Rs.14,000/-

Compensation after applying

multiplier of 15 : Rs.14,000/- X 15 X 12

Disability : 25,20,000

15. The Tribunal has awarded a sum of Rs.3,000/- and a sum of Rs.30,000 towards extra nourishment and pain and sufferings, which has to be modified and the same is enhanced to Rs.20,000/- and Rs.1,00,000/- respectively and this Court is inclined to grant a sum of Rs.20,000/- attender charges.

16. The award passed by the Tribunal is modified as follows:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Disability	1,80,000	25,20,000
Pain and sufferings	30,000	1,00,000
Transportation	3,000	3,000
Attender Charges	-	20,000
Extra Nourishment	3,000	20,000
Total	2,16,000	26,60,000

17. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.2,16,000/- is enhanced to Rs.26,60,000/-. However, contributory negligence fixed by the Tribunal is reduced to 20% and hence, 20% has to be deducted towards contributory negligence from the total compensation. Hence, the second respondent Insurance company is directed to deposit a sum of Rs. 21,28,000/- (Rupees twenty one laksh and twenty eight thousand only), 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 four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.



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To
Motor Accident Claims Tribunal
(the Chief Judicial Magistrate) at Nagapattinam.



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msv



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The matter is listed today under the caption “for being mentioned” at the instance of the Registry.

2. It is brought to the notice of this Court by the Registry that in paragraph Nos.16 and 17 of the order dated 02.12.2014, the total amount of compensation has been inadvertently mentioned as Rs.26,60,000/- instead of Rs.26,63,000/-, and the second respondent-Insurance Company has been directed to deposit a sum of Rs.21,28,000/- instead of Rs.21,30,400/-. Therefore, the Registry seeks appropriate clarification.

3. This Court has perused the order dated 02.12.2014 and finds that the aforesaid inadvertent totaling error has occurred, whereby the compensation amount has been mentioned as Rs.26,60,000/- instead of Rs.26,63,000/-, and consequently, the direction to the second respondent-Insurance Company to deposit the compensation amount has been wrongly mentioned as Rs.21,28,000/- instead of Rs.21,30,400/-.



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4. Accordingly, the Registry is directed to replace the Paragraph Nos.16 and 17 of the order dated 02.12.2014 in C.M.A.No.2216 of 2019, is as follows:

“16. The award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Disability	1,80,000	25,20,000
Pain and sufferings	30,000	1,00,000
Transportation	3,000	3,000
Attender Charges	-	20,000
Extra Nourishment	3,000	20,000
Total	2,16,000	26,63,000

17. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.2,16,000/- is enhanced to Rs.26,63,000/-. However, contributory negligence fixed by the Tribunal is reduced to 20% and hence, 20% has to be deducted towards contributory negligence from the total compensation. Hence, the second



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respondent Insurance company is directed to deposit a sum of Rs.21,30,400/- (Rupees twenty one lakh thirty thousand and four hundred only), 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 four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

5. The Registry is directed to make necessary corrections in the order dated 02.12.2014 in C.M.A.No.2216 of 2019 and issue fresh corrected order copies to all the parties concerned. All other observations made in the said order dated 02.12.2014 in C.M.A.No.2216 of 2019 shall remain unaltered.

10.09.2025

msv

M.DHANDAPANI, J.

msv



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