



C.M.A.(MD) No.392 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.392 of 2009

Sivaraman @ Sivananatham

... Appellant

Vs.

1.Gomathi,
2.M/s.Royal Sundaram Alliance Insurance Co. Ltd.,
46, Wildas Road,
Chennai – 14.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under 173 of the Motor Vehicle Act, 1988, against the judgment and decree dated 27.01.2009 in M.C.O.P.No.611 of 2006 on the file of the Motor Accidents Claims Tribunal cum Principal Sub Court, Kumbakonam, Thanjavur.

For Appellant	: Mr.S.B.Jameelarasu
For Respondents	
for R1	: No appearance
for R2	: Mr.S.Srinivasa Raghavan

J U D G M E N T

The instant appeal has been filed seeking enhancement of the compensation awarded by the Tribunal.



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2. Since the finding on negligence and liability are not under challenge, the facts leading to the filing of the claim petition may not be necessary for deciding the issue involved in this appeal.

3. The learned counsel for the appellant/claimant submitted that though the Doctor-P.W.2 had assessed the disability at 39.33%, considering the fracture and other grievous injuries suffered by the appellant, the Tribunal had erroneously reduced the disability to 30% and awarded meagre compensation of Rs.30,000/- under the head 'Permanent disability'; that the compensation under the head 'Loss of amenities' was not awarded; and that the compensation under the other heads is meagre and that hence, the appellant is entitled to enhanced compensation.

4. The learned counsel for the second respondent/Insurance Company, per contra, submitted that the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

5. Though notice was served on the first respondent/owner of the vehicle, none has entered appearance.



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6. The only point for consideration in the instant appeal is '*whether the compensation awarded by the Tribunal is just and reasonable?*'

7. Admittedly, the Doctor, examined on the side of the appellant/claimant as P.W.2, had certified that the disability suffered by the claimant was partial permanent disability to the extent of 39.33%. In the light of the said evidence and the absence of any other contrary evidence, the Tribunal ought not to have reduced the percentage of the disability to 30%. The appellant had not established that he had suffered any functional disability due to the injuries suffered by him. Considering the year of accident, this Court is of the view that a sum of Rs.2,000/- can be awarded for the percentage of the disability. Thus, the compensation under the head 'Permanent disability' has to be enhanced to Rs.78,000/-.

8. Though the Tribunal had not awarded the compensation under the head 'Loss of amenities', this Court is of the view that a sum of Rs.25,000/- can be awarded under the said head.

9. Though the claimant had produced Ex.P6 series-Bills to prove the expenses incurred by him, the Tribunal had disbelieved the bills and



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awarded only a sum of Rs.800/- under the head 'Medical expenses'.

Considering the nature of the bills, which have been certified by a registered practitioner and the appellant was treated as inpatient in two spells, this Court is of the view that the claimant would be entitled to a sum of Rs.7,200/-, for the treatment taken by him for the period from 13.04.2007 to 28.04.2007 and Rs.12,600/- for the treatment taken by him from 05.06.2007 to 03.07.2007, which is certified by the Doctor and he would also be entitled to Rs.800/- towards lab charges for the treatment taken by him. Thus, the compensation under the head 'Medical expenses' can be enhanced from Rs.800/- to Rs.20,600/-.

10. The compensation under the heads 'Transport charges' and 'Extra nourishment' has been awarded at Rs.10,000/- by the Tribunal. However, this Court is of the view that that can be enhanced to Rs. 20,000/-. Thus, the compensation awarded by the Tribunal is enhanced as follows:

<i>Sl. No</i>	<i>Description</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed, enhanced or granted</i>
1	Pain and sufferings	Rs. 25,000/-	Rs. 25,000/-	Confirmed



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2	Permanent disability	Rs. 30,000/-	Rs. 78,000/-	Enhanced
3	Medical expenses	Rs. 800/-	Rs. 20,600/-	Enhanced
4	Loss of income	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	Transportation and Extra Nourishment	Rs. 10,000/-	Rs. 20,000/-	Enhanced
6	Loss of amenities	---	Rs. 25,000/-	Granted
Total		Rs. 80,800/-	Rs.1,83,600/-	Enhanced by Rs.1,02,800/-

11. The second respondent/Insurance Company is directed to deposit the enhanced compensation of Rs.1,83,600/- (Rupees One Lakh Eighty Three Thousand and Six Hundred only) together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization (excluding the period of dismissal for default if any) and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. On such deposit, the appellant/claimant is entitled to withdraw the same together with proportionate interest and costs, less the amount already withdrawn, if any, by filing an appropriate application before the Tribunal. The appellant/claimant is directed to pay the necessary Court Fee, if any, on the enhanced amount.



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13. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1.Motor Accidents Claims Tribunal cum Principal Sub Court,
Kumbakonam, Thanjavur.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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