



C.M.A.(MD) No.459 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.459 of 2020

C.Devaraj.

... Appellant

Vs.

1.Kalidhasan,
2.Haridhas,
3.M/s.United India Insurance Company Ltd.,
Chennai,
Branch Office at ACC Building 2nd Floor,
P.W.D. Road, Nagercoil.
Kanyakumari.

4.Murali,
5.Sriram General Insurance Company Ltd,
E-8/EPIR, R1100,
Sithaboora, Jaipur,
Rajasthan – 30202, India

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.05.2018 in M.C.O.P.No.5 of 2013 on the file of the Chief Judicial Magistrate/Motor Accident Claims Tribunal, Nagercoil, Kanyakumari.



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For Appellant : Mr.A.Elis Chitra Devi

For Respondents :
for R1, R2 & R4 : No appearance
for R3 : Mr.J.S.Murali
for R5 : Mr.V.Sakthivel

J U D G M E N T

The instant appeal has been preferred seeking enhancement of the compensation.

2. The appellant filed a claim petition stating that while he was travelling in his tempo van, a lorry insured with the third respondent came in a rash and negligent manner and dashed against the claimant, as a result of which, he sustained several grievous injuries.

3. The third respondent filed a counter stating that the accident took place only due to the negligence of the claimant and that in any case, the compensation claimed was excessive.

4. Before the Tribunal, the claimant examined himself as P.W.1 and two more witnesses as P.W.2 and P.W.3 and marked Exs.P1 to P15. The



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third respondent examined four witnesses as R.W.1 to R.W.4 and marked

Exs.R1 to R9.

5. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place only due to the rash and negligent driving of the vehicle insured with the third respondent herein and directed the third respondent to pay the compensation at Rs. 2,82,079/-.

6. The learned counsel for the appellant/claimant submitted that though the Doctor assessed the disability at 30%, the Tribunal erroneously reduced it to 25%; that the award of the compensation in other heads is meagre; that the Tribunal had rejected the medical bills, which is supported by the evidence of the Doctor; and that the Tribunal had not awarded any compensation under the head future medical expenses.

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



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

9. Admittedly, the appellant had suffered fractures in the femur bone and the patella and the appellant had also undergone surgery for the fractures suffered by him. The Doctor assessed the disability at 30%. However, the Tribunal had disbelieved the evidence of the Doctor stating that he was in the habit of giving evidence in the Court regularly for the benefit of the claimants. However, this Court is of the view that the evidence of the Doctor has to be assessed on its own merits and cannot be rejected merely because he had been given evidence in other cases. The nature of the injuries suffered by the claimant would show that the disability assessed by the Doctor at 30% cannot be said to be excessive. Therefore, this Court is of the view that the disability can be fixed at 30% and Rs.3,000/- can be awarded per percentage of disability. Hence, the compensation under the head 'Disability' is enhanced to Rs.90,000/-.

10. Similarly, the Tribunal had disbelieved Ex.P12 series/the medical bills submitted by the appellant herein for the treatment taken for a period between March 2013 and April 2015 to the tune of Rs.44,324/-. It



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is seen from the evidence of the Doctor that he had prescribed medicines and issued prescriptions, which were marked as Ex.P14 series. There is no reason to disbelieve the prescriptions issued by the Doctor and the medical bills submitted by the claimant and therefore, this Court is of the view that the medical bills-Ex.P12 series can be accepted and Rs.44,324/- can be awarded to the claimant.

11. As regards the future medical expenses, the claimant had produced a certificate from the Doctor Ex.P10 to show that the claimant has to undergo surgery to remove the rod, screws and wires. However, the doctor had given an approximate cost of Rs.50,000/-. This Court is of the view that considering the year of the accident and the nature of the expenses spent for the surgery, a sum of Rs.25,000/- can be awarded under the head 'future medical expenses'.

12. Though the Tribunal had awarded a sum of Rs.1,300/- towards extra nourishment, this Court is of the view that the same can be enhanced to Rs.5,000/-. The Tribunal had awarded Rs.2,000/- under the head 'Transport charges'. This Court is of the view that Rs.5,000/- can be awarded under the said head. Thus, the compensation awarded by the



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Tribunal is enhanced as follows:

Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Partial permanent disability	Rs. 75,000/-	Rs. 90,000/-	Enhanced
2	Pain and sufferings	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3	Loss of amenities	Rs. 50,000/-	Rs. 50,000/-	Confirmed
4	Medical expenses as per Ex.P7	Rs.1,00,279/-	Rs. 1,00,279/-	Confirmed
5	Attendant charges	Rs. 1,500/-	Rs. 1,500/-	Confirmed
6	Extra nourishment	Rs. 1,300/-	Rs. 5,000/-	Enhanced
7	Loss of income	Rs. 27,000/-	Rs. 27,000/-	Confirmed
8	Transportation charges	Rs. 2,000/-	Rs. 5,000/-	Enhanced
9	Medical expenses as per Ex.P12 series	---	Rs. 44,324/-	Granted
10	Future medical expenses	---	Rs. 25,000/-	Granted
Total		Rs.2,82,079/-	Rs.3,73,103/-	Enhanced by Rs.91,024/-

13. The third respondent/Insurance Company is directed to deposit the enhanced compensation amount of Rs.3,73,103/- (Rupees Three Lakhs Seventy Three Thousand One Hundred and three 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 delay period of 534 days in filing this appeal) and costs, less the amount already deposited, if any, within a



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period of four (4) weeks from the date of receipt of a copy of this order.

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14. The claimant/appellant is permitted to withdraw the compensation, 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.

15. 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. The Chief Judicial Magistrate/Motor Accident Claims Tribunal,
Nagercoil, Kanyakumari.

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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