



C.M.A.(MD) No.612 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)No.612 of 2024

Murugan

... Appellant

Vs.

1.Muthukumar

2. Jothiman Beedi Company Pvt. Ltd.,
through its Manager,
running at Nethaji Road,
Melapalayam, Palayamkottai,
Tirunelveli District. - 627 005.

3. The Branch Manager,
National Insurance Company Ltd.,
26/2, Shanmugapattar Complex Upstairs,
Perumal Kovil Street,
Tenkasi- 627 811.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, for enhancement of compensation against the judgment and decree dated 04.01.2014 passed by the Motor Accidents Claim Tribunal/Additional Subordinate Judge, Tenkasi, in M.C.O.P.No.6 of 2022.

For Appellant

: Mr.D.Srinivasaragavan



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For R1 & R2

: Exparte

For R3

: Mr.D.Sivaraman

J U D G M E N T

The instant Civil Miscellaneous Appeal has been filed by the claimants seeking enhancement of the compensation awarded by the Motor Accidents Claim Tribunal/Additional Subordinate Judge, Tenkasi, in M.C.O.P.No.6 of 2022.

2. The appellant filed a claim petition stating that while he was proceeding in his two wheeler, the driver of a TATA 407 vehicle bearing Reg. No.TN-72-BQ-5574 insured with the third respondent herein, came in a rash and negligent manner and dashed against the two-wheeler, as a result of which he sustained multiple grievous injuries and had to undergo surgery on the right thigh, left and right wrists for the fracture suffered by him.

3. The owner of the vehicle/2nd respondent herein and the driver of the vehicle/1st respondent herein remained *ex parte* before the Tribunal.



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the other heads is meagre and prayed for enhancement.

8. Since the respondents 1 and 2 remained *ex parte* before the Tribunal, notice to R1 and R2 is dispensed with.

9. The learned counsel for the third respondent Insurance Company, per contra, submitted that the Tribunal had erroneously applied the multiplier method though the appellant had not established any functional disability, and that in any case, the compensation awarded by the Tribunal is just and reasonable and no interference is called for.

10. The only question involved in the instant appeal is: whether the compensation awarded by the Tribunal is just and reasonable?.

11. The appellant examined himself as PW1 to prove his avocation at the time of the accident. He had not produced any document to either prove the avocation or the income at the relevant point of time. The appellant had established that he had sustained fractures in the right femur and in both the wrists and had also undergone surgeries for the said



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fractures and he was also treated as an inpatient for nearly 10 days. Medical records, namely, Ex.P3, the discharge summary, Ex.P2, the xerox copy of the scan report, and the other records, namely, Ex.P11 and Ex.P12, produced on the side of the appellant, would show that a plate was fixed during the surgery. However, there is no evidence on the side of the appellant to prove that he had suffered functional disability. The Tribunal, however, adopted the multiplier method by assessing the functional disability at 45%. The Medical Board had assessed the disability at 45% and as partial permanent disability, which cannot be assumed as functional disability in the absence of any definite evidence. However, considering the fact the accident took place in the year 2021 and even if Rs.7,000/- is awarded for a percentage of disability which can be fixed at 40% the compensation under the head 'disability' is reasonable. Hence, this Court is not inclined to disturb the said finding of the Tribunal.

12. As regards the compensation under the Head pain and sufferings, this Court is of the view that considering the nature of the injury suffered, the compensation under the said Head can be enhanced to



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Rs.50,000/- and the compensation under the following heads can be enhanced in the following manner; extra-nourishment to Rs.15,000/-; transportation to Rs.10,000/-; attender charges to Rs.20,000/- and Loss of amenities to Rs.25,000/-. The Tribunal has not awarded compensation under the head future medical expenses. Admittedly, plate and screws were fixed during the surgery. Hence, the appellant would incur additional expenses for removal of the plates by undergoing surgery at a later point of time. Further the appellant has to undergo physiotherapy continuously,. Hence, this Court is of the view that a sum of Rs.50,000/- can be awarded towards future medical expenses. On overall consideration, the compensation awarded under the head Functional Disability is just and reasonable, and hence, the same is confirmed. The award of compensation under the other heads is also reasonable and hence confirmed. Thus the compensation is modified as follows:

Sl. No	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed, enhanced or granted
1	Functional Disability	2,91,600/-	2,91,600/-	Confirmed
2	Pain and suffering	10,000/-	50,000/-	Enhanced
3	Extra nourishment	5,000/-	15,000/-	Enhanced
4	Transportation charges	4,000/-	10,000/-	Enhanced
5	Damages to clothes	1,000/-	1,000/-	Confirmed



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6	Attender Charges	5,000/-	20,000/-	Enhanced
7	Medical Bills	1,84,149/-	1,84,149/-	Confirmed
8	Loss of Amenities	5,000/-	25,000/-	Enhanced
9	Future Medical Expenses	NIL	50,000/-	Granted
Total		Rs.5,05,749/-	Rs.6,46,749/-	Enhanced by Rs.1,41,000/-

12. The third respondent Insurance Company is directed to deposit the enhanced award amount Rs.6,46,749/- 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 six (6) weeks from the date of receipt of a copy of this order.

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



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

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No costs.

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Index: Yes/ No

NCC: Yes / No

PJL

To

The Motor Accidents Claim Tribunal/

Additional Subordinate Judge,

Tenkasi.



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SUNDER MOHAN, J.

PJL

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