



CMA.No.262 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.04.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.262 of 2005
and C.M.P.No.681 of 2007

D.Subramani

... Appellant

Vs.

1.A.Murugesu Gounder

2.The Branch Manager,
United India Insurance Company Limited,
28, Meenakshi Complex,
Mailam Road,
Tindivanam, Villupuram District.

3.Ivusan

4.Marimuthu

5.Velayutham

(RR3 to 5 residence at Endiyur Village and post,
Tindivanam Taluk, Villupuram District)

1st respondent died, respondents 3 to 5 are brought on record as LRS
of the deceased R1 viz., A.Murugesu Gounder vide Court order dated
01.04.2024 made in CMP.Nos.956 to 957 of 2012 in CMA.No.262 of 2005.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles
Act, against the judgment and award of the learned Motor Accident Claims
Tribunal, Fast Track Court, No.II, Tindivanam, in MCOP.875 of 2002,
dated 22.07.2003.

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For Appellants :Mr.Kaithamalai Kumarn

For Respondents :Mr.P.Sankaranarayanan for R2
Notice Dispensed with for R1

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this Court.

2. R1 remained ex-parte before the Tribunal. The claim petition was contested only by R2. Though the legal representatives of R1 are brought on record as respondents 3 to 5, since R1 remained ex-parte before the Tribunal, notice to the respondents 3 to 5 is dispensed with.

3. It is the case of the claimant that on 28.09.2000, when he was standing on the extreme left side of the road near Sandhaimedu opposite to Ramamoorthy Reddiar Rice Mill, Tindivanam to Vandavasi road, the Tractor belongs to the first respondent insured with the second respondent came in a rash and negligent manner and dashed against him. Due to the accident, the claimant suffered fracture in right thigh, right knee, right tibia



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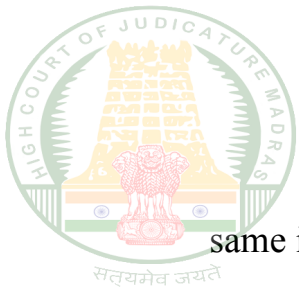
and multiple injuries. Therefore, the claim petition was filed seeking compensation of Rs.10,00,000/-.

4. The claim petition was resisted by the respondent on the ground that the accident had occurred only due to the negligence of the claimant. The nature of injury, age, income of the deceased were also disputed.

5. The Tribunal based on the evidence available on record fixed the quantum of compensation at Rs.90,000/-. Not satisfied with the quantum of compensation, the claimant has come before this Court.

6. The learned counsel appearing for the appellant would submit that the amount of Rs.35,000/- fixed by the Tribunal under the head disability is very much on the lower side. He also submitted that the Tribunal committed an error in not awarding any amount during the treatment period.

7. The learned counsel appearing for the second respondent/Insurance Company would submit that the Tribunal on proper appreciation of evidence available on record fixed Rs.90,000/- as compensation and the



same is just and reasonable.

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8. The claimant was examined as PW.1 and he deposed that there was negligence on the part of the driver of the tractor. A perusal of Ex.A1-FIR would indicate that the Criminal case was registered against the driver of the Tractor. Therefore, there is no difficulty in coming to the conclusion that the accident had occurred only due to the negligence on the part of the driver of the Tractor. No arguments were advanced before this Court assailing finding of Tribunal on the question of negligence, as this is an appeal by claimant seeking enhancement of compensation.

9. In order to prove the nature of injury suffered by the claimant, the doctor was examined as PW.3. A perusal of his evidence, would establish that he was not a doctor who treated the claimant at the time of accident and he examined the claimant only after two years. He issued a certificate fixing the disability suffered by the claimant at 43%. The Tribunal awarded only Rs.35,000/- towards injury suffered by the claimant. Taking into consideration the date of accident, this Court feels it would be appropriate to grant a sum of Rs.1,000/- per percentage of disability.



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Therefore, the amount of Rs.35,000/- awarded by the Tribunal under the head injuries is increased to Rs.43,000/- under the head disability.

10. Though the claimant marked several medical bills, the Tribunal observed that there is no evidence to indicate that the medical bills are relating to the treatment of the claimant inspite of the injuries suffered in the accident. Therefore, the Tribunal awarded a sum of Rs.45,000/- towards treatment and other expenses by taking into consideration the nature of injury suffered by the claimant and the period of hospitalisation and the said amount is confirmed. The amount of Rs.10,000/- awarded by the Tribunal towards pain and suffering is affirmed with a modification, the same shall be treated as compensation for pain and suffering and loss of amenities. The Tribunal has not awarded any amount under the head loss of income for the treatment period. Having regard to the nature of the injury suffered by the claimant and the period of hospitalisation, this Court feels that it would be appropriate to grant loss of income for three months. The accident had occurred in the year 2000, therefore, this Court is inclined to fix notional income at Rs.3,000/- and award a sum of Rs.9,000/- under the head loss of income for treatment period.



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11. The appellant/claimant filed an application in C.M.P.No.681 of 2007 seeking production of additional evidence namely the medical bills.

12. It is the case of the claimant that he developed complication of the said injury. Subsequent to the complication of the injury sustained in accident, he visited Dr.Soundarapandian, Bone and Joint Hospital, as per his medical advice, he underwent surgery on 12.08.2006. The medical bills and the discharge summary have been produced as additional documents. A perusal of the discharge summary would indicate that the claimant developed further complication in the fracture and therefore, he was advised to undergo fresh surgery and the medical expenses incurred by him is evidenced by various bills produced by the appellant. A perusal of the consolidated bills produced by the appellant dated 28.08.2006 would indicate that the claimant incurred an expenditure of Rs.84,275 towards hospitalisation and medical expenses. Since the documents produced by the claimant were not available at the time of enquiry before the Tribunal, the petitioner/claimant has made out a case for allowing this petition.



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13. Accordingly, the Civil Miscellaneous Petition in

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14. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Disability	Rs.35,000/-	Rs.43,000/-
2.	Pain and suffering and loss of amenities	Rs.10,000/-	Rs.10,000/-
3.	Medical expenses	Rs.45,000/-	Rs.1,29,275/-
4.	Loss of income	-	Rs.9,000/-
	Total	Rs.90,000/-	Rs.1,91,275/-

15. In view of the discussions made earlier, the compensation



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awarded by the Tribunal is enhanced to Rs.1,91,275/-. The 2nd

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respondent/Insurance Company is directed to deposit the enhanced award amount together with interest at the rate of 7.5% per annum from the date of claim petitions to the date of realisation, after deducting the amount already deposited, if any, to the credit of MCOP. No.875 of 2002, on the file of Fast Track Court No.II, Tindivanam, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the said amount by filing appropriate application before the Tribunal.

16. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

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Index : Yes/No

Speaking order: Yes/No

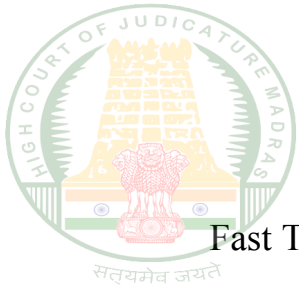
Neutral Citation: Yes/No

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To

1.The Motor Accident Claims Tribunal Authority,

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Fast Track Court, No.II, Tindivanam.

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2.The Section Officer
VR Section, High Court, Madras.



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S.SOUNTHAR, J.

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