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CMA.No. 901 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.901 of 2025

Jeyaseelan

... Appellant

Vs.

1. Dinesh

2. Bharathi AXA General Insurance Company Ltd.,
rep. by its Manager, first floor, the Ferns Icon,
SurveyNo.28, Next to Akme Ballet, Doddanekundi,
off outer Ring Road, Bangalore 560 037.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to enhance the award and judgment dated 05.01.2017 made in MCOP No.656 of 2012 on the file of the IV Additional District Judge, Motor Accident Claims Tribunal, Erode District and Bhavani..

For appellant : Mr.C.Kulanthaivel

For Respondents : Ms.R.Rathina Thara for second respondent



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JUDGMENT

Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has come before this court by filing the present appeal.

2. The first respondent/owner of the vehicle remained absent before the Tribunal and hence, notice to him is dispensed with.

3. Ms.R.Rathna Thara, learned counsel takes notice for the second respondent.

4. According to the claimant, he suffered injury in a road accident that had occurred on 24.12.2011. It is the case of the claimant that when he was standing near front door of his lorry after parking his vehicle, a lorry belonging to the first respondent, insured with the second respondent came in a rash and negligent manner and hit against the claimant from behind. As a result of accident, the claimant suffered fracture in his head and clavicle bone. Therefore, the claimant filed a claim petition seeking compensation of Rs.10,00,000/-.



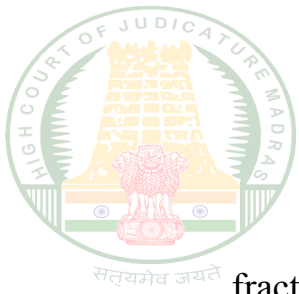
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5. The first respondent, owner of the offending vehicle remained *exparte* before the Tribunal and the claim petition was contested only by the insurer of the lorry. It is the case of the second respondent/ insurance company before the Tribunal that the driver of the lorry insured with the second respondent had driven the vehicle safely by following traffic rules and denied the allegation made in the claim petition regarding the manner of accident. The insurance company also denied the age, income and occupation, as claimed in the claim petition.

6. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred only due to the negligence on the part of the driver of offending vehicle, and quantified the compensation payable to the claimant at Rs.3,26,840/- Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this court.

7. The learned counsel for the appellant would submit that the claimant was a heavy vehicle driver by profession and he sustained



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fracture on his head and also clavicle bone. The Doctor, who examined the claimant issued disability certificate fixing disability at 50%. In such circumstances, the Tribunal committed a great error in not applying multiplier method.

8. The learned counsel for the second respondent would submit that in the absence of evidence to show that the injury suffered by the claimant interfered with his avocation, the Tribunal was justified in granting compensation on percentage basis.

9. In order to prove the disability suffered by the claimant, Doctor was examined as PW2, through him, disability certificate issued by him was marked as Ex.P11. A perusal of Ex.P11 would indicate that the claimant sustained “fracture of bilateral inferior and superior pubic rami with associated small hematoma, fracture in the right iliac bone, fracture in the lateral third of clavicle and fracture of anterior and posterior column of left acetabulum besides abrasion and contusion”. The Doctor fixed the disability suffered by the claimant at 50%.



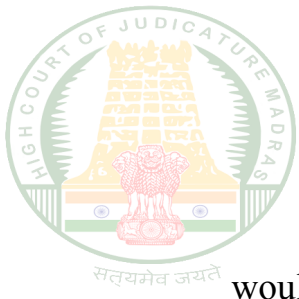
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10. When the claimant was examined as PW1, he categorically admitted in his cross examination that he came to the court without the help of any person. Therefore, the Tribunal came to the conclusion that the disability suffered by him had not rendered him unsuitable to perform his day today activities. In the absence of any evidence to suggest that the injury suffered by the claimant interfered with his avocation, the Tribunal rightly came to the conclusion that the claimant had not suffered any functional disability and proceeded to award compensation by following percentage basis.

11. The accident had occurred in the year 2011. Therefore, the Tribunal granted a sum of Rs.1,50,000/- as compensation towards permanent disability by giving Rs.3,000/- per percentage and the same appears to be reasonable and hence, it is confirmed.

12. The tribunal has not given any compensation under the head loss of amenities, however, an amount of Rs.75,000/- was awarded towards pain and sufferings. Having regard to the date of accident and the nature of injury sustained by the claimant, this court feels that it



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would be appropriate to award a sum of Rs.50,000/- towards pain and sufferings and a sum of Rs.25,000/- towards loss of amenities.

13. The learned counsel for the appellant would submit that the Tribunal has not awarded any amount under the head attender charges. It is seen from the records that the claimant was treated in hospital for 18 days and thereafter, he continued treatment for some time. Therefore, the claimant is entitled to a sum of Rs.10,000/- towards attender charges and a sum of Rs.5,000/- towards extra nourishment. However, the Tribunal awarded compensation of Rs.15,000/- under the head extra nourishment and the same is treated as towards extra nourishment as well as attender charges.

14. The Tribunal fixed notional income at Rs.6,000/- per month and granted a sum of Rs.75,000/- under the head loss of income. Therefore, it is clear that the Tribunal has awarded compensation towards loss of income for nearly 12 ½ months. Having regard to the nature of injury suffered by the claimant and the notional income fixed by the Tribunal, the said amount is not disturbed. Further, the amount



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awarded by the Tribunal towards transportation charges, damages to clothes, medical expenses appear to be reasonable and hence, the same are confirmed.

15. In view of the above, this court do not find anything to interfere with the award passed by the Tribunal and hence, this civil miscellaneous appeal is dismissed. There shall be no order as to costs.

26.03.2025

Index : Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
mst

To

1. IV Additional District Judge,
Motor Accident Claims Tribunal,
Erode District at Bhavani.
2. The Section Officer,
V.R. Section, Madras High Court.



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S.SOUNTHAR, J.

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