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C.M.A.No.2414 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.2414 of 2021

Sankar

...Appellant

Vs.

1. R.Mageswaran

2. Branch Manager,
National Insurance Co. Ltd.,
Branch Office, Anuradha Complex, 3rd Floor,
Banglore Road, Krishnagiri – 635 001.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the Judgment dated 31.03.2021 made in MCOP.No.933 of 2019 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Krishnagiri.

For Appellant : M/s.L.Manisha

For Respondents : Mr.J.Chandran, for R2
No Appearance, for R1



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JUDGEMENT

Challenging the judgment dated 31.03.2021 made in MCOP.No.933 of 2019 on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Krishnagiri, the claimant has come up with this appeal.

2. The case of the appellant is that, on 08.05.2019 at about 07.30 p.m., when he was proceeding towards Pochampalli in the Hero Honda Splendor motorcycle bearing Regn.No.TN-24-F-8710 driven by one Venkatesan as a pillion rider and when they were nearing the Thiruvayalur Bus Stop, at that time, a Bolero Pick-up Van bearing Regn.No.TN-24-AB-2542, owned by the 1st respondent, insured with the 2nd respondent, driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the above said motorcycle, due to which, the appellant sustained grievous injuries all over his body and got admitted in the hospital. Thereby, the appellant filed a claim petition claiming a compensation of Rs.30,00,000/-. Before the tribunal, the appellant examined himself as witness P.W.1 and marked exhibits P.1 to P.9 and on the side of respondents, no documents were marked and no



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witness was examined and the Disability Certificate was marked as Court document Ex.C.1. After trial, the Tribunal, on appreciation of oral and documentary evidence, though came to a conclusion that the accident had taken place due to the rash and negligent driving on the part of the driver of the 1st respondent Bolero Van, however, awarded a meagre compensation of Rs.9,74,134/-. Challenging the same, the appellant has filed the present appeal seeking enhancement of the compensation fixed by the tribunal.

3. Further, the appellant also marked the Medical bills for the date from 03.09.2021 to 09.09.2021 and the Discharge summary dated 09.09.2021 as additional documents Ex.D.1 and Ex.D2 before this Court through CMP.No.12669 of 2024 and Disability Certificate dated 08.01.2025 issued by the Medical board pursuant to the order of this Court dated 28.11.2024 is marked as Ex.D3.

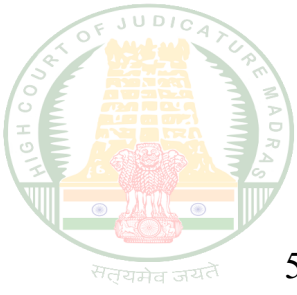
4. Learned counsel appearing for the appellant submitted that, the above said accident occurred solely due to the rash and negligent driving on the part



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of the driver of the 1st respondent vehicle, due to which, the appellant sustained functional disability and at the time of accident, the appellant was aged about 33 years and was working as a Mason and due to the injuries sustained by him in the above said accident, the appellant is not able to continue his avocation which he was carrying on before the accident and due to which, his earning capacity got reduced. Further, for the said accident, an FIR also came to be registered as against the driver of the 1st respondent vehicle. Further, at the time of the accident, the appellant was earning a sum of Rs.25,000/- per month, however, the tribunal had taken the monthly income of the appellant as Rs.8,000/-, which is very meagre and as the appellant sustained permanent functional disability, he could not do his day to day activities without the help of another person and he has to be taken care of till his life time. However, the Tribunal had failed to award any compensation under the head “Attender charges”. Further, the compensation awarded under other heads are also on the lower side and the same requires to be reconsidered and a higher compensation ought to be awarded to the appellant. Accordingly, she prays for appropriate enhancement in favour of the appellant.



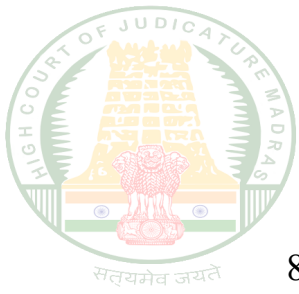
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5. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

6. Heard learned counsel on either side and perused the materials available on record.

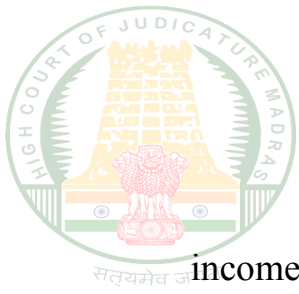
7. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The major grievances of the appellant is with regard to the quantum of compensation and the negligence fixed by the Tribunal. It is claimed by the appellant that the accident is of the year 2019 and the appellant was a Mason by profession and at the time of accident, the appellant was earning a sum of Rs.25,000/- per month, however, without considering the same, the Tribunal has fixed the notional income at Rs.8,000/-, which is very meagre.



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8. In this regard, this Court perused the Disability Certificate dated 08.01.2025 marked as document Ex.D1 before this Court and a perusal of the same reveals that, due to the above said accident the appellant sustained functional disability to an extent of 55%. Though the tribunal had rightly adopted multiplier method to arrive at the compensation under the head Loss of income, however, taken the disability sustained by the appellant at 40% and fixed the notional income at Rs.8,000/- which is very meagre for the accident of the year 2019. It has been the view of the Courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them. Even it has been held by the Apex Court that the wages should be in line with the minimum wages fixed by the State. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, fixing a notional income of Rs.15,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the



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income per month is quantified at Rs.21,000/- and the appellant being aged about 33 years, as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in *(2009) 6 SCC 121*, and as the appellant suffered functional disability of 90%, the loss of income is arrived at $\text{Rs.21,000/-} \times 12 \times 16 \times 55\% = \text{Rs.22,17,600/-}$.

9. Insofar as the compensation awarded under the other heads are concerned, the tribunal had awarded a sum of Rs.30,000/- and Rs.10,000/- under the heads Pain and suffering and Extra nourishment respectively, which are very meagre and thereby, this Court is inclined to enhance the same to Rs.50,000/- and Rs.30,000/- respectively. Further, no compensation has been awarded under the head Attender charges and thereby, this Court awards a sum of Rs.20,000/- under the said head.

10. Insofar as the compensation awarded under the head medical expenses is concerned, a perusal of the Medical Bills and Discharge summary

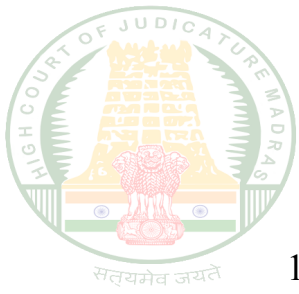


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marked as Exs.D1 and D2 through the CMP.No.2414 of 2021 before this Court makes it clear that, the appellant failed to file the medical bills with discharge summary totalling a sum of Rs.74,461/- along with the original medical bills which pertains to a sum of Rs.2,71,734/- before the tribunal and the said fact was also not disputed by the learned counsel appearing on behalf of the 2nd respondent-insurance company. Accordingly the compensation under the head medical expenses stands modified to Rs.3,46,195/-.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Functional Disability (55%)	6,14,400/-	22,17,600/-
Medical Expenses	2,71,734/-	3,46,195/-
Transportation expenses	43,000/-	43,000/-
Pain and sufferings	30,000/-	50,000/-
Extra Nourishment	10,000/-	30,000/-
Damages to clothes	5,000/-	5,000/-
Attender Charges	-	20,000/-
Total	9,74,134/-	27,11,795/-



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12. Accordingly, this Appeal stands allowed and the impugned Award passed by the Tribunal in MCOP.No.933 of 2019 is modified by enhancing the compensation amount from **Rs.9,74,134/-** to **Rs.27,11,795/-**. The 2nd respondent-Insurance Company is directed to deposit the said amount to the credit of MCOP.No.933 of 2019 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. It is underscored that the appellant is not entitled to any interest for the default period, if any. There shall be no order as to costs in the present appeal.

21.01.2025
(2/2)

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No



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M.DHANDAPANI, J.

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To

- 1.The Motor Accidents Claims Tribunal and Chief Judicial Magistrate,
Krishnagiri.
- 2.The Section Officer,
V.R. Section, High Court, Madras.

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(2/2)

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