



CMA.No.3185 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.No.3185 of 2021

Ayyappan

... Appellant

Vs.

1.Manokaran

2.The National Insurance Company Limited,
Branch Office No.II, Pondicherry.

3.Arul

4.The New India Insurance Company Limited,
Thiruvannamalai.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to allow the present appeal award enhanced compensation in judgment and decree dated 15.10.2019 in MCOP.No.296/2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge, No.II (FAC), Villupuram as prayed for in this Civil Miscellaneous Appeal.



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For Appellant : Ms.D.Jeevitha

For Respondents : M/s.N.B.Surekha for R2
M/s.S.Dhakshnamoorthy for R4
No Appearance for R3
R1-Dismissed vide
c/o dated 24/04/2024

J U D G M E N T

The appellant/injured claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (Special Sub Judge, No.II (FAC)), Villupuram, in M.C.O.P.No.296 of 2017, dated 15.10.2019, has come by way of this Civil Miscellaneous Appeal.

2. The appellant/claimant met with an accident on 09.10.2005, when he travelled as a pillion rider in Motor Vehicle driven by one Bharath. It is the case of the claimant that Tipper lorry bearing registration No.PY-01-AB-3238, which came in the opposite direction caused the accident and as a result of which, he suffered fracture in the left femur. Since no arguments were advanced on the question of negligence and liability, necessary facts leading to the fixation of negligence and liability



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by the Tribunal not discussed herein.

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3. Heard the learned counsel for appellant/claimant and the learned counsel for second respondent/Insurance Company.

4. The learned counsel appearing for the appellant submits that the claimants suffered fracture in the left femur and at the time of accident, he was employed as a milk vending boy. The learned counsel further submitted that the Tribunal committed error in fixation of contributory negligence on the claimant at the rate of 15% on the ground that the appellant/claimant failed to wear helmet. The learned counsel also submitted that the Tribunal has not granted any amount towards loss of amenities and therefore, the compensation fixed by the Tribunal needs enhancement.

5. The learned counsel appearing for the contesting 3rd respondent/insurance company would submit that the claimant failed to wear helmet and hence, committed an offence under Section 129 of Motor Vehicles Act and therefore, the Tribunal is justified in fixing 15% of



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contributory negligence on the claimant. He further submitted that the claimant has not suffered any serious injury so as to affect the avocation and hence Tribunal rightly awarded compensation on percentage basis.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. A reading of the claim petition would suggest that at the time of accident, the claimant was a college going student and he was also employed as a milk vending boy. Based on Ex.P2-school certificate and Ex.P3-Discharge certificate, the Tribunal came to the conclusion that the claimant suffered fracture in the left femur and he was operated for the same. The internal plate fixation was also done as a result of which, the claimant suffered a shortage of “one inch” in the left leg. The Tribunal based on Ex.C1-disability certificate issued by the Medical Board fixed disability at 10% and calculated the compensation on percentage basis. The accident had occurred on 09.10.2005, therefore, the Tribunal is justified in fixing compensation at the rate of Rs.2,000/- per percentage of disability. Hence, the amount of Rs.20,000/- fixed under the head



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permanent disability need not be interfered with.

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8. Admittedly, the claimant failed to wear a helmet at the time of accident, therefore, the Tribunal fixed contributory negligence of 15% on the claimant and deducted proportionate compensation as mentioned earlier. The claimant suffered a fracture in the left femur and there is no head injury. In such circumstances, his failure to wear helmet has nothing to do with the injuries suffered by him. The Tribunal ought not to have fixed the contributory negligence on the appellant/claimant and deducted 15% compensation amount payable to the claimant. Accordingly, the said finding of the Tribunal is set aside.

9. As per the disability certificate Ex.C1, the claimant suffered shortage of his limb. The discharge summary would indicate that the claimant was operated and internal plate fixation was done. Therefore, the claimant may not be in a position to lead a normal life. In such circumstances, this Court deems it appropriate to grant a sum of Rs.10,000/- towards loss of amenities.



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10. In the light of the above discussion, this Court modifies the compensation in the following manner:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Pain and suffering	20,000/-	20,000/-
2.	Loss of Income	24,000/-	24,000/-
3.	Nutrition	5,000/-	5,000/-
4.	Damages to cloth	500/-	500/-
5.	Transport	5,000/-	5,000/-
6.	Permanent Disability	20,000/-	20,000/-
7.	Attender charges	9,000/-	9,000/-
8.	Loss of amenities	-	10,000/-
	Total	83,500/-	93,500/-
	Less: Contributory negligence	(83,500/-*15%) 12,525/-	-
	Compensation payable (12,525 – 83500) 70,975/-	70,975/- rounded off to Rs.71,000/-	93,500/-

11. In view of the discussion made earlier, the claimant is



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entitled to a sum of Rs.83,500/- as fixed by the Tribunal without deduction of 15% towards contributory negligence. In addition to the same, the claimant is entitled to a sum of Rs.10,000/- towards loss of amenities. Hence, the claimant is entitled to enhance award amount of Rs.93,500/- instead of Rs.71,000/-. The claimant is entitled to interest at the rate of 7.5% on the enhanced award. The respondents are directed to deposit the enhanced amount with interest within a period of four weeks from the date of a copy of this judgment, to the credit of M.C.O.P.No.296 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Judge, No.II (FAC), Villupuram. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount, if any, already withdrawn, by making formal application before the Tribunal.

12. Accordingly, this 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
(Special Sub Judge, No.II (FAC), Villupuram.

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



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This matter is posted today under the caption 'For being mentioned' at the instance of the learned counsel for the 2nd respondent.

2. The learned counsel for the 2nd respondent submitted that as per the award passed by the Tribunal, only 3rd and 4th respondents are jointly and severally liable to pay the award amount and the 2nd respondent Insurance company was exonerated. In the judgment passed in the appeal, in Paragraph No.11, there is a direction to all the respondents to deposit the enhanced amount along with interest. The same shall be a direction to the 4th respondent.

3. Registry is directed to replace the words “**respondents are**” with “**4th respondent is**” in the 7th line of 11th paragraph of the judgment dated 03.02.2025 in C.M.A.No.3185 of 2021.

4. Registry is directed to issue fresh order copy by incorporating the above said changes.



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