



CMA.No.2502 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.2502 of 2023 and
C.M.P.No.8537 of 2024

S.Sudhakaran

... Appellant

Vs.

1. R.Latha

2.Oriental Insurance Co ltd
Motor Third Party Claims-Hub,
No.216, Prakasam Salai,
Broadway, Chennai 600 108

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance the compensation in the judgment and decree dated 25.10.2021 made in MCOP No.305/2018 on the file of MACT/II-Small Causes Court at Chennai

For Appellant : Mr.MA.P.Thangavel
For Respondent :M/s.R.Sree Vidhya for R2
R1- Exparte



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JUDGMENT

Aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, the injured claimant has come before this Court by way of this appeal seeking enhancement of the compensation.

2. It is not in dispute that the appellant /claimant suffered injury in a road accident that had taken place on 09-11-2017. According to the claimant, he sustained fracture on his left thigh bone and knee.

3. The learned counsel for the Appellant/Claimant and the learned counsel for the Second Respondent/ Insurance Company have not advanced any arguments on the questions of negligence as well as liability. Therefore, the facts necessary to decide those questions are not discussed in this appeal.

4. The learned counsel for the Appellant submitted that pending appeal, the appellant filed an application in CMP.No. 8537 of 2024 seeking to mark the following documents as additional evidence in the appeal.



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“1. Rental agreement entered between the appellant and landlord to run Gym and Fitness center.

2. Continuous medical treatment records.

3. Photograph of the injured showing nature of grievous injury.

4. Cash Voucher/Bills issued to the customers on behalf of SK Gym A/C High Tech Multi Fitness Center

5. X-Ray”

5. The learned counsel for the Appellant submitted that the claimant was a bodybuilder and he was running a gym prior to the accident and due to the injury suffered by him, he is totally immobilized and unable to run the gym. In order to prove the income of the deceased by running the gym, the claimant produced the rental agreement entered between the claimant and his landlord regarding the gym building and the cash voucher bills issued to the customers on behalf of the gym run by the claimant prior to the accident. It is an admitted fact that the rental agreement and various voucher bills



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produced by the claimant were available with him when the enquiry was going on before the Tribunal. For the reasons best known to the claimant, he failed to produce the rental agreement and the cash vouchers before the Tribunal. In the affidavit filed in support of application to raise additional evidence, the claimant has not stated any reason for his failure to produce these old documents before the Tribunal. In the absence of convincing reason for his failure to produce these old documents which were available with him at the time of enquiry before the Tribunal, this Court is not inclined to accept the case of the claimant as regards additional documents described in Serial No. 1 and 4. As far as additional documents described in Serial Nos. 2, 3, and 5 are concerned, those documents came into existence only subsequent to the award passed by the Tribunal. These documents are produced by the claimant to show that he has been in continuous medical treatment even after the award passed by the Tribunal. Since those documents are produced to show that claimant has been in continuous medical treatment even after passing of award, due to the infection suffered by him in the fracture area, the CMP.No. 8537 of



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2024 filed by him to produce the additional evidence is allowed only in respect of documents described in Serial Nos. 2, 3 and 5. CMP.No. 8537 of 2024 is dismissed in respect of documents described in Serial Nos. 1 and 4.

6. The learned counsel for the appellant submitted that the claimant was running a gym and earning a sum of Rs. 25,000/- and the Tribunal committed an error in fixing income of the claimant at Rs. 12,905/-. The learned counsel further submitted that the claimant has been in continuous treatment even after passing of the award. Therefore, the amount awarded by the Tribunal under various other heads like attendant charges, extra nourishment, transportation charges etc., are not adequate.

7. The learned counsel for the Second Respondent/ Insurance Company submitted that the Tribunal followed the guidelines issued by the Hon'ble Apex Court in *Syed Sathick case* and fixed notional income of the claimant at Rs. 12,905/- and the same requires no interference. The learned counsel further submitted that the Tribunal awarded excessive amount of Rs.1,00,000/- under the head pain and



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WEB COPY suffering. Therefore, the amount awarded by the Tribunal under various other heads like extra nourishment, transportation charges, attendant charges need not be enhanced.

8. A perusal of the medical documents produced by the claimant namely Exhibit P-8 and Exhibit P-11 would indicate that the claimant suffered multiple fracture in his left thigh and knee. He was treated with internal fixation. However, from the documents produced by the claimant in the petition for raising additional evidence namely subsequent medical records, X-Ray etc., it is clear that the claimant suffered infection in the surgical area and he has been in continuous treatment even after the date of award. Taking into consideration the said fact, this Court feels that amount awarded by the Tribunal under the heads attendant charges, transportation charges, extra nourishment requires enhancement. The claimant is entitled to Rs. 50,000/- towards attendant charges, Rs.30,000/- towards extra nourishment charges, Rs.20,000/- towards transportation charges.

9. Taking into consideration the prolonged treatment and the suffering undergone by the claimant, the amount of Rs.1,00,000/-



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awarded under the head pain and suffering is confirmed. The Tribunal has not awarded any amount under the head loss of amenities. It is clear from the evidence available on record that the claimant cannot enjoy his life in the same style in which he enjoyed it before the accident. Therefore, the claimant is entitled to Rs. 50,000/- under the head loss of amenities.

10. The accident had occurred in the year 2017. It was averred by the claimant that he was earning a sum of Rs.20,000/- to Rs.25,000/- at the time of accident. However, no evidence has been produced by him to prove the income. Taking into consideration the date of accident and the cost of living, this Court feels that it would be appropriate to fix Rs.15,000/- as notional income for the claimant at the time of accident. The disability certificate issued by the medical board marked as Exhibit C1 would suggest that the claimant suffered 70% disability. Therefore, he is entitled to Rs. 29,98,800/- under the head loss of earning power due to his disability.

$$15,000 \times 1.4 \times 12 \times 17 \times 70 / 100 = \text{Rs. } 29,98,800/-$$

11. In view of the discussions made earlier, the award passed by



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Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Pain and Suffering	1,00,000/-	1,00,000/-	Confirmed
2.	Attender Charges	28,000/-	50,000/-	Enhanced
3.	Extra Nourishments	20,000/-	30,000/-	Enhanced
4.	Transportation charges	10,000/-	20,000/-	Enhanced
5	Loss of amenities	Nil	50,000/-	Granted
6.	Medical expenses	49,719/-	49,719/-	Confirmed
7.	Loss of earning due to disability	25,79,968/-	29,98,800/-	Enhanced
	Total	27,87,687/-	32,98,519/-	Enhanced by Rs.5,10,832 /-

12. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.27,87,687/- is hereby enhanced to Rs.32,98,519/-. It is made clear that the claimant is not entitled to claim any interest for the



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WEB COPY delay period of 435 days. The appellant/claimant is entitled to interest at the rate of 7.5% per annum (excluding the delay period of 435 days) from the date of filing of the claim petition till the date of realization.

13. It is stated by the learned counsel for the 2nd respondent that the 2nd respondent /Insurance Company has already deposited the entire award amount together with interest. The 2nd respondent /Insurance Company is directed to deposit the enhanced award amount, to the credit of MCOP No.305/2018 on the file of Motor Accident Claims Tribunal /II-Small Causes Court, Chennai, along with interests and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment. On such deposit, the claimant is permitted to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. The civil miscellaneous petition is partly allowed. No costs.

20.03.2025

Index:Yes/No



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WEB COPY Internet: Yes/No
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To

1. Motor Accident Claims Tribunal,
II-Small Causes Court, Chennai,
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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