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CMA.No.499 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 21.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.499 of 2025

Elangovan

... Appellant

Vs.

1. M/s Bharath Construction,
No.1/311, North Street, Vallam Post,
Panruti Taluk 607 805,
Cuddalore District.

2. The Branch Manager,
The National Insurance Co. Ltd.,
No.165, Nethaji Road, Manjapakkam,
Cuddalore 607 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 to allow the appeal and enhance the compensation awarded in MCOP No.211 of 2021 dated 13.02.2024 on the file of the Special District Court -II, Motor Accident Claims Tribunal, Cuddalore.



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For appellants : Ms.Ramya V. Rao

For Respondents : Mr.R.Prem Chander for second respondent

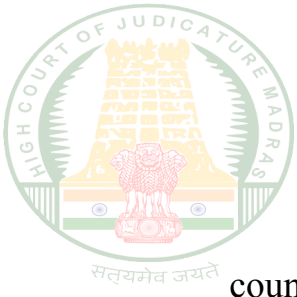
JUDGMENT

Not satisfied with the quantum of compensation awarded by Tribunal, the claimant has come before this court by filing the present appeal.

2. It is not in dispute that the appellant/claimant suffered a fracture in his proximal humerus bone on left hand due to the road accident that had occurred on 12.12.2020 and he was treated by fixing of IMIL Nailing, as per the discharge summary Ex.P3. The appellant filed a claim petition before the Tribunal, seeking compensation of Rs.15,00,000/-. Based on the evidence available on record, the Tribunal awarded a compensation of Rs.2,37,700/-. Not satisfied with the quantum of compensation, the claimant has come before this Court.

3. The first respondent remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with.

4. Heard the learned counsel for the appellant and the learned



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counsel for the second respondent/insurance company.

5. Both the counsel for the appellant and the second respondent have not advanced any arguments on the questions of negligence and liability and therefore, the facts necessary for fixing negligence and liability have not been considered in the present appeal.

6. The learned counsel for the appellant would submit that the Medical Board assessed the disability of the claimant/appellant at 26%. The Tribunal, without taking into consideration the date of accident, has awarded only a sum of Rs.5,000/- per percentage and the same is very much on lower side. He further submits that the amounts awarded under the heads extra nourishment, attender's charges and loss of income during the treatment period are also very much on lower side.

7. The learned counsel for the second respondent/ insurance company would submit that taking into consideration the nature of injury suffered by the claimant, the Tribunal was justified in fixing a sum of Rs.5,000/- per percentage. He also submits that the amounts



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awarded by the Tribunal under various heads are justifiable and hence, the same need no interference by this court.

8. The accident had taken place on 12.12.2020. In the claim petition, the appellant/claimant has stated that he was employed as Mason at the relevant point of time and due to the fracture suffered in his left hand, his avocation was affected. A perusal of Ex.P3 discharge summary would indicate that the claimant suffered a fracture in the proximal humerus bone of his left hand and he was treated by IMIL Nailing fixation. The competent medical board had assessed the disability and issued the disability certificate Ex.C1, fixing the disability at 26%. Taking into consideration the nature of injury suffered by claimant and the date of accident, this court feels that it would be appropriate to fix a sum of Rs.9,000/- per percentage. Therefore, the claimant/appellant is entitled to a sum of Rs.2,34,000/- (9000 x 26).

9. As per the Ex.P3 discharge summary, the claimant was



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admitted in hospital on 13.12.2020 and after treatment, he was discharged on 17.12.2020. Taking into consideration the said fact, an amount of Rs.5,000/- awarded under Extra Nourishment is enhanced to Rs.10,000/-. Likewise, a sum of Rs.2,500/- awarded towards attender charges is enhanced to Rs.5,000/- and a sum of Rs.20,000/- awarded towards pain and sufferings is enhanced to Rs.30,000/-.

10. The fracture suffered by the claimant in his left hand would have kept him out of his avocation atleast for two months. If the notional income is fixed at Rs.16,500/- per month, the claimant will be entitled to a sum of Rs.33,000/- (16,500 x 2) towards loss of income during the treatment period.

11. Accordingly, the revised compensation awarded by this Court is tabulated as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	1,30,000	2,34,000	enhanced
2.	Pain and sufferings	20,000	30,000	enhanced



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3.	Loss of comfort and amenities	20,000	20,000	confirmed
4.	Extra nourishment	5,000	10,000	enhanced
5.	Attender charges	2,500	5,000	enhanced
6.	Medical expenses	40,200	40,200	confirmed
7.	Transport expenses	5,000	5,000	confirmed
8.	Loss of expectation of life	10,000	-	set aside
9.	Loss of income during treatment	5,000	33,000	enhanced
	Total	2,37,700	3,77,200	enhanced by 1,39,500

12. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,37,700/- is hereby enhanced to **Rs.3,77,200/-** together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

13. The **second respondent** is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **four weeks** from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/ claimant shall be permitted to withdraw the compensation amount along with interest and



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costs, less the amount if any, already withdrawn, by making formal application before the Tribunal. There shall be no order as to costs.

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Index: Yes/No
Internet: Yes/No
mst

To

1. The Special District Judge -II,
Motor Accident Claims Tribunal,
Cuddalore.



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S.SOUNTCHAR, J.

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