



CMA.No.280 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.280 of 2023

E.Chandrasekaran

... Appellant

Vs.

1.Karnan

2.National Insurance Company Ltd
LRN Colony, Saradha College Main Road, Hasthampatty,
Salem-7.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded in the Judgment and Decree dated 01.02.2020 made in MCOP No. 1875 of 2017 on the file of MACT/Special District Court at Salem.

For Appellant : Mr.M.Lokesh
For Respondents : M/s.S.Vadivel for R2
R1-Notice dispensed with



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JUDGMENT

Aggrieved by the quantum of compensation fixed 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 the case of the appellant/claimant that he suffered injury in a road accident that had taken place on 18-07-2017. According to him, he was driving a two-wheeler along with a pillion rider namely Sivaraj proceeding from Omalur to Tharamangalam Main Road. When his two-wheeler came near Sekar Coir Mill, the lorry belonged to the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the two-wheeler. As a result of the accident, the pillion rider Sivaraj died and the appellant herein sustained grievous injuries. Hence, the claim petition was filed seeking compensation of Rs.50 lakhs for the injuries suffered by the claimant.



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3. The first respondent, owner of the lorry remained ex-parte before the Tribunal and the claim petition was opposed by the second respondent/ insurance company on the ground that there was no negligence on the part of the driver of the lorry and the entire negligence was only on the part of the claimant.

4. 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 the lorry. The Tribunal also found that there was violation of policy conditions as driver of the lorry did not possess valid driving license and hence, pay and recovery order was passed against the insurer. The compensation payable to the claimant was quantified at Rs. 2,46,759/-. Not satisfied with the quantum, the claimant has come before this Court.

5. The learned counsel for the Appellant submitted that due to the accident, the claimant suffered injury in his private part and the disability



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WEB COPY suffered by him has been spoken to by the doctor who was examined as PW3. The Tribunal, without proper appreciation of evidence of PW3, erroneously fixed permanent disability at 12% and awarded meagre compensation of Rs.36,000/- under the head permanent disability. The learned counsel also submitted that the Tribunal committed an error in not awarding compensation under the head loss of income.

6. The learned counsel for the Second Respondent/ Insurance Company submitted that the competent medical board which examined the claimant assessed the disability at 12 %. Therefore, the Tribunal was justified in awarding compensation based on the disability certificate issued by the medical board.

7. In the award, though the Tribunal referred about the disability certificate issued by the Medical Board attached with the Joint Director of Health Services, Salem, the same has not been mentioned as an exhibit in the annexure to the award. Therefore, this Court called for a report from the Tribunal regarding the alleged disability certificate relied on by the



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8. Pursuant to the direction issued by this Court, the Tribunal/ Special District Judge to deal with MCOP cases (FAC), Salem filed a report dated 22-04-2025 wherein it is clearly stated that the claimant was referred to Medical Board by the Tribunal and the Joint Director of Health Services, Salem forwarded the disability certificate issued by the Medical Board dated 28-05-2019 to the Tribunal and the same was relied on. The copy of the disability certificate issued by the Medical Board dated 28-05-2019 is also forwarded to this Court along with the report.

9. A perusal of the same would suggest that the claimant suffered stable pelvic fracture and urethral injury. It is also stated that the injury suffered by the claimant was treated conservatively. Regarding the clinical features at the time of examination, the board observed that the claimant had difficulty in sitting cross-legged and felt pain in hip. It is also noted that he had no difficulty in micturition. Taking into consideration the clinical features at the relevant point of time, the



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Tribunal fixed the percentage of the disability at 12%. Though PW3, private doctor, who examined the claimant, opined that he suffered 30% permanent disability, the Tribunal rightly held that PW3 was not a doctor who treated the injured. He has given certificate based on the medical records produced by him. When the competent medical board assessed the claimant and arrived at a conclusion that the disability suffered by the claimant is 12%, the Tribunal was justified in fixing the permanent disability at 12%. However, the Tribunal granted only Rs.3,000/- per percentage of the disability and the same is on lower side. Taking into consideration the date of accident (2017), this court is inclined to grant Rs.7,000/- per percentage of the disability. Therefore, the amount awarded by the Tribunal under the head of permanent disability is enhanced to Rs. 84,000/- (Rs.7,000 x 12). The Tribunal awarded a sum of Rs.75,000/- under the head pain and suffering. A perusal of the discharge summaries marked by the claimant as Exhibits P10 to P12, Ex.P14 and Ex.P15 would establish that claimant has been hospitalized intermittently during the period from July 2017 to June 2018. Taking into consideration the prolonged hospitalization and the treatment for a longer period, this



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Court is inclined to grant a sum of Rs. 50,000/- under the head pain and suffering. Apart from the same, the claimant is entitled Rs.25,000/- towards loss of amenities. The Tribunal awarded Rs.1,10,759/- under the head medical expenses and the same is based on the medical bills produced by the claimant marked as Ex.P17 (wrongly mentioned as Ex.P24 by Tribunal). Further, as seen from records, Ex.P17, is the scan bill for a sum of Rs.2530/-. Therefore, amount awarded under the head medical expenses is increased to Rs.1,13,289/-. The amount of Rs.25,000/- awarded by the Tribunal under the head attendant charges is also confirmed. The claimant has not been awarded any amount under the head loss of income during treatment period.

10. In the claim petition, it was stated that the injured was a diploma holder in Electrical and Electronics Engineering and he was working in a petrol bunk at the relevant point of time and was earning Rs.15,000/- per month. Though the claimant has not produced any documentary evidence to prove the age and the avocation, taking into consideration the date of accident and the cost of living, this Court is



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WEB COPY inclined to fix the notional income at Rs.15,000/- per month.

11.As discussed earlier, the claimant has been in treatment for prolonged period with intermittent hospitalization. Therefore, this Court is inclined to grant loss of income for six months period. Accordingly, the claimant is entitled to Rs.90,000/- (Rs.15,000 x 6) under the head loss of income during treatment period.

12. In view of the discussions made earlier, the compensation awarded by the Tribunal is modified as follows:-

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	36,000/-	84,000/-	Enhanced
2.	Pain and Suffering	75,000/-	50,000/-	Reduced
3.	Loss of amenities	Nil	25,000/-	Granted
4	Attender charges	25,000/-	25,000/-	Confirmed
5.	Loss of income	Nil	90,000/-	Granted
6	Medical Bills	1,10,759/-	1,13,289	Enhanced
	Total	2,46,759/-	3,87,289/-	Enhanced by Rs.1,40,530/-



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13. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,46,759/- is enhanced to Rs.3,87,289/-.

14. The Tribunal found that there was a policy violation and hence, ordered pay and recovery. The said order is confirmed.

15. The appellant is entitled to interest at the rate of 7.5% per annum from the date of filing of the claim petition till the date of realization. In view of the order passed by this Court in CMP.No.19152 of 2022, it is made clear that the claimant is not entitled to claim any interest for the delay period of 170 days. The second respondent /Insurance company is directed to deposit the enhanced award amount to the credit of MCOP.No.1875 of 2017 on the file of MACT/Special District Court , Salem, along with interest 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. The appellant/claimant is permitted to withdraw the same



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along with interests and costs, less the amount if any, already withdrawn
by filing a formal application before the Tribunal. No costs.

29.04.2025

Index: Yes/No
Internet: Yes/No
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To

1. Motor Accidents Claims Tribunal
Special District Court, Salem.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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