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CMA NO.2744 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 18 / 11 / 2024

JUDGMENT DELIVERED ON: 02 / 01 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.2744 OF 2023

E.Ganesh Babu ... Appellant / Petitioner

Vs.

1.M/s.R.R.Infraa Construction
Old No.4C, New No.2,
Visalakshipuram,
Madurai – 625 014.

2.The Oriental Insurance Co. Ltd.,
No.115 / 216, Prakasam Road,
Chennai – 600 108. ... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 26, 2023 passed in M.C.O.P.No.2314 of 2020, on the file of the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai and enhance the compensation.



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For Appellant : Mr.K.Suryanarayanan
For Respondent-1 : No appearance
For Respondent-2 : Mr.D.Bhaskaran

J U D G M E N T

R.SAKTHIVEL, J.

Dissatisfied with the Award dated July 26, 2023 passed by the 'Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai' in M.C.O.P.No.2314 of 2020, the petitioner therein has filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONER'S CASE

3. On May 17, 2020 at about 14.30 hours, when the petitioner was waiting to turn east near Indira Nagar Railway Station Signal, Rajiv Gandhi Salai, Chennai, on the motorcycle bearing Registration No.TN-14-F-5140, properly wearing a helmet, a Mahindra Bolero Jeep bearing Registration No.TN-59-BJ-4810 driven in a rash and negligent manner from the opposite direction, dashed against the petitioner's motorcycle,



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due to which, the petitioner fell down and suffered fracture at right leg and hip as well as multiple grievous injuries all over his body. The driver of the Mahindra Bolero Jeep alone is responsible for the accident. The 1st respondent, being the owner of the jeep and the 2nd respondent being the insurer of the jeep, are liable to pay compensation to the petitioner. Hence, the petitioner filed the Original Petition seeking a compensation of Rs.30,00,000/- (Rupees Thirty Lakhs only) from the respondents.

FIRST RESPONDENT'S CASE

4. The first respondent is the owner of the Mahindra Bolero Jeep bearing Registration No.TN-59-BJ-4810. He did not appear before the Tribunal and contest the Original Petition. Hence, he was called absent and set *ex-parte* by the Tribunal on February 23, 2021.

SECOND RESPONDENT'S CASE

5. The second respondent – Insurance Company filed a counter, which is nothing more than a formal denial of all the petition averments, seeking dismissal of the Claim Petition.



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6. Before the Tribunal, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.13 were marked on the side of the petitioner. Neither any witness was examined nor any document was marked on the side of the second respondent. Disability Certificate issued by Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai was marked as Ex-C.1.

7. The Tribunal, upon hearing either side and perusing the evidence available on record, relied on Ex-P.1 – First Information Report (FIR), Ex-P.3 - Charge Sheet and the evidence of P.W.1 to conclude that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent's jeep. The Tribunal further held there is no evidence available on record to question or contradict the manner of accident alleged by the petitioner. Since the 1st respondent's jeep was insured with the 2nd respondent – Insurance Company and the insurance policy was in force on the date of accident, the Tribunal held that the second respondent is liable to pay compensation to the petitioner and accordingly, awarded compensation of Rs.4,39,800/- (Rupees Four Lakh Thirty-Nine Thousand and Eight Hundred only) as tabulated hereunder:



<i>S.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1)	Disability	Rs.2,85,000.00
2)	Pain and Sufferings	Rs.50,000.00
3)	Transportation	Rs.10,000.00
4)	Extra Nourishment	Rs.10,000.00
5)	Attender Charges	Rs.3,780.00
6)	Damages to Clothes	Rs.1,000.00
7)	Loss of Amenities	Rs.10,000.00
8)	Loss of Earnings	Rs.70,000.00
Total		Rs.4,39,780.00
Rounded off		Rs.4,39,800.00

8. Dissatisfied with the quantum of compensation awarded by the Tribunal, the petitioner has filed this Civil Miscellaneous Appeal seeking enhancement of compensation.

ARGUMENTS:

9. Mr.K.Suryanarayanan, learned Counsel for the appellant / petitioner argued that the petitioner was working as a Car Driver under one Advocate by name Srinivasan and earned a sum of Rs.18,000/- per month as well as Rs.100/- per day as Batta. Due to the accident, the petitioner is unable to perform his job as well as carry out his routine as he used to before the accident. The petitioner was admitted in Hospitals



multiple times as in-patient, totally for 126 days. The petitioner underwent multiple surgeries. The petitioner suffered *periprosthetic fracture left thigh, unifying fracture both bone left leg on EXFIX, RTA over left leg and non-union fracture both bone left leg / post THR status L Hip / post proximal femoral nailing status left femur*. Further argued that the Tribunal miserably failed to appreciate the evidence on record in the right perspective. The Tribunal failed to note that, though Ex-C.1 – Disability Certificate assess petitioner's disability as 57% permanent disability, in view of his avocation and nature of the injuries, the petitioner suffers 100% functional disability. Accordingly, he prayed to enhance the compensation amount.

10. Per contra, Mr.D.Bhaskaran, learned Counsel for the second respondent / Insurance Company submitted that the compensation awarded by the Tribunal is excessive and irrational. There is no negligence on the part of the first respondent's driver. The initial burden is upon the petitioner to prove the alleged negligence on the part of the driver of the first respondent's jeep and the petitioner has failed to discharge the said burden. The petitioner has not examined any independent ocular witness to the accident. In the absence of proof, the Tribunal is not right in



fastening the liability on the first respondent. Further, the petitioner did not prove his avocation and monthly income. Mere possession of Driving License to drive Light Motor Vehicles is not sufficient to conclude that the petitioner was a Driver. Hence, there is no warrant to interfere with the Award passed by the Tribunal. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

DISCUSSION:

11. This Court has heard the submissions made on either side and perused the materials available on record.

12. The second respondent – Insurance Company neither filed an Appeal nor Cross Objection praying to discharge its burden. There is no serious dispute with the manner of accident and the liability fastened on the 2nd respondent by the Tribunal. Moreover, the evidence of P.W.1 coupled with FIR (Ex-P.1) and Charge Sheet (Ex-P.3) would establish that the accident occurred due to the rash and negligent driving of the 1st respondent's driver. Further, the 2nd respondent, has not denied the factum of insurance of the 1st respondent's jeep with it. There is no contra evidence to the case of the petitioner. In these circumstances, this Court is



of the view that the petitioner has *prima facie* proved the manner of accident as well as that the 1st respondent's jeep was insured with the 2nd respondent – Insurance Company. Hence, the 2nd respondent is liable to pay compensation to the petitioner.

13. Coming to the quantum of compensation, the Tribunal relying on Ex-C.1 fixed disability of the petitioner as 57% permanent disability and the notional income of petitioner at Rs.14,000/-. Accordingly, the Tribunal arrived at the disability compensation of Rs.2,85,000/-. It further awarded compensation under various heads as stated *supra*. Totally a compensation of Rs.4,39,800/- was granted by the Tribunal.

14. In this case, the petitioner examined himself as P.W.1 and deposed that he was working as a driver under one Advocate by name Srinivasan earning a sum of Rs.18,000/- per month along with a Batta of Rs.100/- per day. Ex-P.13 is his driving licence with badge. It shows that the petitioner possessed a valid driving licence to drive Light Motor – Transport vehicles on the date of accident, which makes his averment that he was working as a driver plausible. However, no document was adduced to prove his alleged monthly income. The said Advocate was also not



examined to prove the monthly income of the petitioner. In these circumstances, considering the age of the petitioner at the time of accident as well as Ex-P.13, this Court is of the view that the petitioner would have earned a sum of Rs.15,000/- per month.

15. Immediately after the accident, the petitioner was taken to Government Royapettah Hospital, Chennai. For the injuries sustained, the petitioner was admitted there as in-patient and obtained treatment totally for 126 days in multiple stints *i.e.*, from June 22, 2020 to August 14, 2020, from November 18, 2020 to December 18, 2020, from July 13, 2021 to July 30, 2021, from January 22, 2021 to May 2021 and from December 20, 2021 to December 27, 2021. He underwent totally six surgeries on various dates *viz.*, June 27, 2020, July 16, 2020, August 7, 2020, December 10, 2020, July 22, 2021 and February 2, 2021. The relevant discharge summaries issued by Government Royapettah Hospital are marked as Ex-P.5 to Ex-P.9. The treatment records issued by it are marked as Ex-P.4. Further, P.W.1 has deposed that though he has been discharged from hospital, continuous treatment is required. Hospital Case Records marked as Ex-P.4, Ex-P.5 to Ex-P.9 corroborate the evidence of P.W.1 in this regard.



16. The Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai vide Ex-C.1 – Medical Report assessed his disability as 57% permanent disability. Relevant extract of Ex-C.1 is as hereunder:

“Post traumatic sequelae, Left Lower Limb due to RTA – Both bone II Left Leg and his percentage is 57% (Fifty Seven only).”

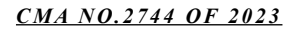
17. Ex-C.1 coupled with Ex-P.5 to Ex-P.9 reveals that the petitioner suffered *Periprosthetic fracture left thigh, uniting fracture both bone left leg on EXFIX, RTA over left leg and non-union fracture both bone left leg / post THR status L Hip / post proximal femoral nailing status left femur*. Due to the accident, the petitioner's left leg has been severely injured. The fact that the accident occurred in 2020 and the petitioner was suffering from a 57% permanent disability in 2023 (as per Ex-C.1) clearly indicates the severity of the injuries sustained. Consequently, the petitioner will not be able to lead his normal life nor engage in his driving profession anymore. It has to be noted that though the petitioner will not be able to drive, he can do other work. In these circumstances, this Court is of the view that the petitioner suffers 50% functional disability. At the time of accident, the petitioner's age was 42



years. Hence, as per the decision of the Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation*** reported in ***(2009) 6 SCC 121***, the appropriate Multiplier is 14. Further, the petitioner is entitled to 25% Future Prospects as per the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi***, reported in ***(2017) 16 SCC 680***.

18. Furthermore, the Tribunal awarded Rs.50,000/- under the heading 'pain and sufferings'. The petitioner was admitted for nearly 125 days in the hospital, and underwent multiple surgeries on his left leg and would no more be able to drive. The accident would have left an everlasting mental impact on him. Hence, the compensation awarded under this head appears to be less. Similarly, considering his long period of admission in the hospital, the attender charges awarded by the Tribunal is also on the lower side. They both are liable to be enhanced.

19. Further, the Tribunal erred in simultaneously awarding compensation under the head of Disability and the head of Loss of Earnings. The same is liable to be modified. The compensation awarded by the Tribunal under the other heads appears to be just and reasonable.



awarded by this Court:

Note: (1) NI = Notional Income (2) FP = Future Prospects (3) M = Multiplier (4) m= months (5) FD = Functional Disability

directed to deposit the enhanced award amount of **Rs.17,80,000/- (Rupees Seventeen Lakh Sixty-Six Thousand only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P. No.2314 of 2020 on the file of Motor Accidents Claims Tribunal (III Court of Small Causes), Chennai, less the amount if any already deposited, within a period of two months from the date of receipt of copy of this Judgment. On such deposit being made, the petitioner is entitled to withdraw the same by filing proper application.



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Further, the petitioner is entitled proportionate costs and Advocate fees as per Rules.

CONCLUSION:

22. Resultantly, the Civil Miscellaneous Appeal filed by the petitioner / claimant is allowed in part with proportionate costs and a modified Award is passed as detailed above.

[J.N.B., J.]

[R.S.V., J.]

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

The Motor Accident Claims Tribunal
(III Court of Small Causes)
Chennai.



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J.NISHA BANU, J.
AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CMA NO.2744 OF 2023

02 / 01 / 2025