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CMA No. 932 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-06-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CMA No. 932 of 2023

AND

CMP NO. 8562 OF 2023

1. The Branch Manager
The New India Assurance Co.Ltd.,
No.12, New Hospital Road, Gobi 638
452.

Appellant(s)

Vs

1. P. Shankar (Unsound mind)
S/o. Pacchamuthu, D.No.5, Palanisamy
Gounder St, Kandapadi, Bhavani Taluk,
Erode Dt. Rep by his Gardian/Next
Friend Wife Uma Maheswari.

2.R. Selvarasu
S/o. Ranganaicker, D.No.25/19, Alattur
Post, Bhavani Taluk.

Respondent(s)



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PRAYER

To set aside the decree and judgement passed in MCOP No.441 of 2012 dated 20.06.2018 on the file of the Learned Motor Accident Claims Tribunal (Subordinate Court, Bhavani) Erode District.

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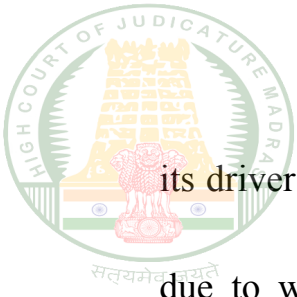
For Appellant(s): M/s.J.Chandran

For Respondent(s): R2 - Dispensed With M/s.
K.Goviganesan For R1

JUDGEMENT

This Civil Miscellaneous Appeal has been filed to set aside the decree and judgement passed in MCOP No.441 of 2012 dated 20.06.2018 on the file of the Learned Motor Accident Claims Tribunal (Subordinate Court, Bhavani) Erode District(in short "tribunal").

2. On 19.01.2012, at about 04.00 p.m, when claimant's husband was riding his Appachi bike bearing registration No. TN 36 K 6585 in Kavunthapaddi – Appakudal road from East to West, at that time, in the opposite direction the Eicher Van bearing registration No. TAU 0356 driven by



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its driver in a rash and negligent manner dashed against the claimant's husband due to which he sustained injuries. Thereafter, the claimant's wife filed the petition before the tribunal claiming compensation. The second respondent insurance company contested the case by filing counter.

2. The learned counsel for the appellant submits that tribunal has erroneously fixed 80% disability without any medical records nor any medical proof as such is liable to be set aside. Further, he submits that injured has not proved that he is unsound mind due to the injuries sustained in the accident, without which, the tribunal has fixed compensation by adopting multiplier method as such is erroneous and liable to be set aside.

3. As per the direction of the Court, the claimant's husband/Sankar appeared before this Court, on enquiry it is found that he was running a shop and earned income living with two children and wife. After the accident he was not able to lift his right hand as well as right leg and also not able to speak properly which clearly shows that after the accident he is partially disabled and also sustained injury in his scalp. Admittedly, the certificate issued by the doctor is not the Government Doctor, which is marked as EX.P12 in which it is stated

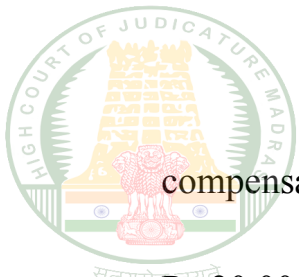


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that he is having speech disturbance and it would be permanent. Though it was not certified by the Government doctor, on enquiry this Court found that there is a speech disturbance to the Sankar and also not able to move his right hand like normal person. Though the doctor fixed 85% disability, this Court is inclined to reduce disability to 60% from 85%/- . At the time of the argument, the learned counsel for the claimant pointed out that the accident was happened in the year 2012, while passing order tribunal has fixed only Rs.5000/- as income of the claimant. He prays to enhance the compensation.

4. The learned counsel for the appellant raised objection stating that without filing any appeal or cross objection, the claimant is not entitled for enhancement of compensation.

5. As per ratio laid down by the Apex Court in the case of MAHANT DHANGIR AND ANOTHER Vs. MADAN MOHAN AND OTHERS and per Order 41 Rule 33, this Court is empowered to enhance the compensation, if a party who benefits from the order hasn't filed an appeal or objection. Hence, this Court is inclined to enhance the notional income of the claimant from Rs.5,000/- to Rs.10,000/-. Further, this Court is inclined to enhance



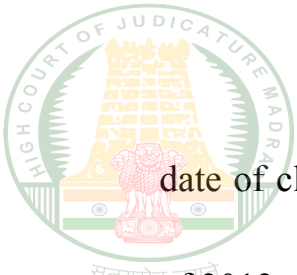
compensation for attender charges and pain and sufferings from Rs.10,000/- to Rs.20,000/-, from Rs.25,000/- to 50,000/-, respectively. Further, the tribunal has

failed to award amount for loss of income and attender charges. The claimant has taken treatment for nearly two months in the hospital. Hence, this Court is inclined to fix Rs. Rs.27,000/- for attender charges and Rs.27,000/-(9,000x3) for loss of income for three months. Except above modification, the award passed by the tribunal remain unchanged.

S.No.	Heads	Compensation awarded by the tribunal.	Compensation awarded by this Court
1.	Loss of income/dependence	Rs.8,16,000/-	Rs.11,52,000/-
2.	Loss of estate	Rs.25,000/-	Rs.25,000/-
3.	Pain and sufferings	Rs.25,000/-	Rs.50,000/-
4.	Medical Expenses	Rs.6,10,758/-	Rs.6,10,758/-
5.	Transportation charges	Rs.10,000/-	Rs.10,000/-
6.	Extra Nourishment	Rs.10,000/-	Rs.20,000/-
7.	Attender charges	Nil	Rs.27,000/-
8.	Loss of income	Nil	Rs.27,000/-
	Total	Rs.14,96,758/-	Rs.19,21,758/-

Rounded off to Rs.19,21,800/-

6. In view of the discussions made earlier, the compensation awarded by the Tribunal is enhanced to **Rs.19,21,800/-**. The appellant is directed to deposit the said amount - together with interest at the rate of 7.5% per annum from the



date of claim petition to the date of realisation, to the credit of MCOP No.441

of 2012 on the file of the Learned Motor Accident Claims Tribunal (Subordinate

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Court, Bhavani) Erode District, within a period eight weeks from the date of receipt of a copy of this judgement. On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount by making formal application before the Tribunal. The appellant may deduct the amount, if any amount has already deposited before the tribunal. In so far as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the claimant(s).

7. Since there is a dispute among the injured Sankar and his family members, after the said accident claimant's wife and children deserted him and now, the injured live with his family members. Admittedly, as on date the claimant is under the care of his mother and his elder brother, who are appeared before this Court in person. Further, on considering the welfare of the children, the claimant is directed to deposit Rs.3,00,000/- each to his minor children's account in any one of the post office account nearer to the children's residence.

After depositing the said amount from the award, the claimant can withdraw the



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remaining amount.

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8. In the result, this Civil Miscellaneous Appeal is disposed of. No Costs.

Consequently, connected miscellaneous petition, if any, is/are closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To

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2.R. Selvarasu
S/o. Ranganaicker, D.No.25/19, Alattur
Post, Bhavani Taluk.

3. The Motor Accident Claims Tribunal
(Subordinate Court, Bhavani) Erode
District.

4. The Section Officer, V.R Section,
High Court, Madras.



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