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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.M.A.No.1533 of 2020

Kuppan,
S/o. Palani,
D. No.3/99, Ayigoundampalayam
Colony, Pallakkapalayam,
Tiruchengode Taluk,
Namakkal-637 303.

... Appellant/Claimant

Vs.

1. Duraisamy,
S/o. Muthusamy,
D.No.3/17, Kattuvalavu,
Sowthapuram Post, Tiruchengode Tk.,
Namakkal Dt. - 638 008.
2. D.Selvi,
W/o. Duraisamy,
D.No.3/17, Kollapatty,
Sowthapuram Post, Tiruchengode Tk.,
Namakkal Dt. - 638 008.
3. The National Insurance Co. Ltd.,
Maruti Vertical Div. No.10,
803-A, 8th Floor, Tower 3,
Konnectus Building, Opp. New
Delhi Railway Station, Bhavbhuti, Marg,
New Delhi - 110 002.
4. The National Insurance Company Limited,
1272-1273, Palaniappa Complex,
Mettur Road, Erode-638 011.
5. Murugan,
S/o. Palanisamy,
D.No.10/90, Manjipalayam,
Pallakkapalayam, Tiruchengode Tk.,
Namakkal Dt.-637 303.



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6. Nallasamy,
S/o. Karuppanna Gounder,
D. No.144, Rama Gounder Valasu,
Chinnapuliyur Post,
Bhavani Taluk, Erode Dt.

... Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal preferred under Section 173 of Motor Vehicles Act against the Order and decree passed in M.C.O.P. No.188 of 2018, dated 06.01.2020 on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : R1, R2, R5 & R6 - set exparte

Mr. K.Padmanabhan
for R3 & R4

J U D G M E N T

The claimant is the appellant, not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Special Sub-Judge, Erode in MCOP No.188 of 2018, has filed the present Civil Miscellaneous Appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of this Civil Miscellaneous Appeal is as follows :

On 03.02.2017 at about 01.30 p.m. while the claimant was travelling as a pillion rider in a two wheeler, in Bhavani to Salem National Highways, on the back side of Pallakkapalayam Muniappan Temple, a omni van bearing Regn. No.TN-34 T-1103 driven by the 1st respondent from opposite direction, came in a rash and negligent manner and dashed against the claimant's two wheeler, in which the claimant has sustained grievous injuries all over the body. Immediately, he was admitted in a private hospital viz., Be-Well Hospital, Erode and taken treatment as inpatient for 10 days. At the time of accident, he was 49 years old, he was working as a coolie in a private mill and earning a sum of Rs.12,000/- per month. According to the claimant, the accident was taken place due to the rash and negligent driving of omni van owned by the 2nd respondent, which was insured with the 3rd and 4th respondents. Hence, they are liable to pay compensation of Rs.10 lakhs. However, the claimant has also made the insurer of a two wheeler, in which he was travelling as a pillion rider and the insurance company as party respondents.

3. Before the tribunal, the respondents 1, 2, 5 and 6 were remained exparte. The 3rd respondent insurance company has



filed a counter affidavit stating that the accident has been taken place due to the in-experience driving of the rider of two wheeler, came in a, high speed in an negligent manner, while overtaking another vehicle, dashed against omni van, in which he has sustained injury. Hence, no negligence could be fixed on the driver of the omni van and disputed the monthly income of deceased and also stated that the compensation claimed by the claimant is highly excessive.

4. Before the Tribunal, the claimant has examined three witnesses and marked as many as 13 documents as Ex.P1 to P13. On the side of respondent, no witness was examined and no document was marked.

5. The Tribunal, after considering the materials available on record, has held that the accident has been taken place due to the rash and negligent driving of driver of offending omni van, which was duly insured with the respondents 3 and 4. Hence, they are legally liable to pay compensation. So far as quantum of compensation is concerned, considering the nature of injuries, awarded a sum of Rs.1,20,000/- towards permanent disability and loss of earning power. In respect of other heads, the Tribunal has awarded a sum of Rs.64,000/- towards loss of earnings, a sum of Rs.7000/- towards transport to hospital, a sum of Rs.10,000/- towards extra nourishment, a sum of Rs.8000/- towards attender charges, a sum of Rs.2000/- towards damages for clothes and articles, a sum of Rs.4,65,000/- towards medical expenses, and a sum of Rs.75,000/- towards pain and sufferings. Thus, totally, the Tribunal has awarded a sum of Rs.7,51,000/- as compensation to the claimant. Not being satisfied with the same, the claimant is before this court by filing this Civil Miscellaneous Appeal.

6. I have heard and considered the rival submissions made by learned counsel appearing for appellant as well as respondents 3 and 4 and perused the records.

7. The accident was taken place in the year 2017. In the said accident, he has suffered the following injury :-

"Polytrauma-type 3A open fracture shaft left femur fracture, intertrochanteric fractures left femur, Type 3A open fracture, proximal tibial (coronal) metaphysis, displaced proximal ulna shaft (WQTY-2) comminuted butterfly fracture right"

The claimant has undergone a surgery and taken treatment as inpatient for 18 days. However, no doctor was examined to assess the disability. The Tribunal, considering the other materials available on record, and also considering the injuries sustained by the claimant, has awarded a sum of Rs.1,20,000/- towards permanent disability and loss of earning power. I find



no infirmity in it. So far as loss of earning is concerned, the claimant was said to have worked as a coolie in a private mill, and earning a sum of Rs.12,000/- per month, but there is no evidence for the same. However, the Tribunal has fixed the monthly income of deceased as Rs.8000/- and for the period of 8 months, and during that period, he was bedridden, the Tribunal has awarded a sum of Rs.64,000/- towards loss of earnings. In respect of the head of extra nourishment, only a sum of Rs.10,000/- was granted. Considering the nature of injury and period of treatment, this Court is inclined to enhance it to Rs.25,000/- and towards attender charges, a sum of Rs.23,000/- is granted instead of Rs.8000/- as awarded by the Tribunal. That apart, towards loss of amenities, the Tribunal did not award any amount. Hence, this Court is inclined to award a sum of Rs.19,000/- in that head. For the remaining heads, the Tribunal has awarded a just and fair compensation and there is no reason to interfere with it.

8. In view of the above, the award passed by the Tribunal is modified as follows :-

Sl. No.	Headings	Amount Awarded by the Tribunal Rs.	Amount awarded by this Court	Award confirmed or enhanced
1	Loss of earnings	64,000	64,000	confirmed
2	Transport to hospital	7,000	7,000	confirmed
3	Extra nourishment	10,000	25,000	enhanced
4	Attender charges	8,000	23,000	enhanced
5	Future medical expenses	nil	Nil	
6	Damages for clothes and articles	2,000	2,000	confirmed
7	Medical expenses	4,65,000	4,65,000	confirmed
8	Pain and sufferings	75,000	75,000	confirmed
9	Permanent disability and loss of earning power	1,20,000	1,20,000	confirmed
10	Loss of amenities	Nil	19,000	granted
	Total	7,51,000	8,00,000	enhanced



Thus, the appellant is entitled to get a sum of Rs.8,00,000/- as compensation instead of Rs.7,51,000/- awarded by the Tribunal.

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,51,000/- is hereby enhanced to Rs.8,00,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents 3 and 4 are directed to deposit the enhanced award amount now determined by this Court along with interest, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit of the enhanced compensation amount, now determined by this Court, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS)

// True Copy//

Sub Assistant Registrar

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To

Motor Accident Claims Tribunal,
Special Subordinate Judge,
Erode.

Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.40327

C.M.A.No.1533 of 2020

LN(CO)
SU(10/08/2021)