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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.1024 of 2012

P.Ashok Kumar

...Appellant/Claimant

Vs.

1.N.Sankaran

(R1 was set exparte in the trial court)

2.National Insurance Co. Ltd.

No.62, T.S.R. Big Street,
Kumbakonam 612 001.

...Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 05.09.2011 passed in M.C.O.P.No.847 of 2009 by the II Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mrs.Sugana for
Mr.C.Munusamy

For respondents : Mr.J. Chandran for R2
R1 : Not Ready notice

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant is before this court for enhancement of the compensation.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 04.07.2008.

3. The brief case of the claimant is as follows: On 04.07.2008, at 17.30 hours, the claimant was riding a motorcycle bearing registration No.TN-09-AJ-6763 along Jawaharlal Nehru 100 feet road and while nearing Ambal Nagar Junction, a car bearing registration No.TN-09-AQ-42465 dashed against the motorcycle, thereby he sustained grievous injuries. According to the



claimant, the rash and negligent driving of the driver of the car was the cause of accident and since the first respondent/owner of the vehicle insured his car with the second respondent/insurance company, both of them are liable to pay compensation.

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4. The claim petition was resisted by the second respondent/ insurance company by filing counter affidavit.

5. Before Tribunal, on the side of the claimant, the claimant and Dr.J.R.R.Thiagarajan were examined as PW1 and PW2 and Ex.P1 to Ex.P7 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

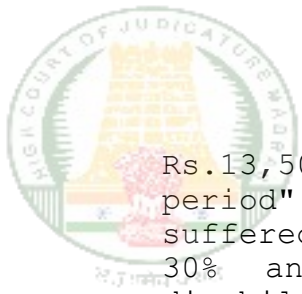
6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,34,000/- as compensation to the claimant. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Permanent disability	60,000
2	Loss of income during treatment period	13,500
3	Transportation charges	1,000
4	Extra Nourishment	2,000
5	Damages to clothes and articles	1,000
6	Medical Expenses	36,500
7	Pain and sufferings	20,000
	Total	1,34,000

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and the counsel appearing for the insurance companies and I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that the claimant had sustained fractures on his left knee, ankle and foot and also abrasions over left hand and he had taken treatment as inpatient in St. Thomas Hospital for months together. According to him due to the accident, the claimant is not in a position to do his avocation as done earlier, however, the Tribunal has awarded only a sum of



Rs.13,500/- towards " Loss of income during the treatment period" and though the PW2 has assessed permanent disability suffered by the claimant as 45%, the Tribunal has taken only at 30% and awarded sum of Rs.60,000/- towards " Permanent disability". He also submitted that the compensation awarded under the other heads also very meagre, and hence, prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted the after analysing the evidence and the documents on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced.

11. Point

The Dr.R..R.Thiayagarajan has assessed the disability suffered by the claimant as 45% and he has given disability certificate Ex.P6. To prove the above said document, he has also examined as PW2. However, the Tribunal has fixed only 30% as disability. When there is no contra evidence to disbelieve the evidence of PW2 and to disprove the disability certificate Ex.P6, the Tribunal has fixed disability only at 30%, which is unsustainable. Therefore, this court fixed the disability suffered by the claimant as 45%. As far as the compensation awarded per percentage is concerned, the Tribunal has rightly awarded a sum of Rs.2,000/-. Accordingly , a sum of Rs.90,000/- is awarded towards "Permanent disability". As far as the compensation awarded towards " Extra Nourishment" is concerned, it is enhanced to Rs.5,000/-. Further, no amount was awarded towards " Loss of amenities" and " Attender's charges" and hence a sum of Rs.10,000/- each is awarded for the above said heads. As far as the other heads are concerned, the Tribunal has rightly awarded a just compensation and it does not warrant any interference by this court. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Permanent disability	60,000 (30x2000)	90,000 (45x2000)
2	Loss of income during treatment period	13,500	13,500



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
3	Transportation charges	1,000	1,000
4	Extra Nourishment	2,000	5,000
5	Damages to clothes and articles	1,000	1,000
6	Medical Expenses	36,500	36,500
7	Pain and sufferings	20,000	20,000
8	Loss of amenities	-	10,000
9	Attender's charges	-	10,000
	Total	1,34,000	1,87,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,34,000/- to Rs.1,87,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,87,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst



To

The II Judge Motor Accident Claims Tribunal,
Court of Small Causes, Chennai-104.

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Copy to:

The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

+1cc to Mr.J.Chandran, Advocate Sr No.14275

+1cc to Mr.C.Munusamy, Advocate Sr No.13324

CMA.No.1024 of 2012

SSI (CO)
PR (16/11/2021)