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In the High Court of Judicature at Madras

Dated: 21.01.2021

Coram

The Honourable Mr. Justice D.KRISHNAKUMAR

C.M.A.No.2942 of 2012

Murugan

... Appellant

..Vs..

1.Terre Des Homes Care Trust,
No.1/65, Kongarapattu Salai,
Vallam Village & Post,
Senji Taluk.

2.Kalle Khan

3.The Branch Manager,
The Oriental Insurance Co. Ltd.,
No.75, Krishnan Street,
Tiruvannamalai.

4.The Manager,
Bajaj Alliance General Insurance Co. Ltd.,
No.25/26, Prince Tower,
Ground Floor,
College Road,
Nungambakkam,
Chennai-600 006.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Principal Sub Judge, Tiruvannamalai in M.A.C.T.O.P.No.46 of 2006 dated 08.11.2010.

For Appellant	:	Mrs.A.Subadra
For Respondent-3	:	Mr.Elveera Ravindran & Mr.K.Vinod
For Respondent-4	:	Mr.R.V.Sivaraj

J U D G M E N T

Being aggrieved by the award passed by the Motor Accident Claims Tribunal/learned Principal Sub Judge, (MACT), Tiruvannamalai in M.A.C.T.O.P.No.46 of 2006 dated 08.11.2010,



the appellant/claimant has preferred this appeal.

2. Heard the learned counsel for the parties.

3. The brief facts of the case are as follows:-

a) On 07.02.2005 at about 5.30 p.m., while the petitioner was proceeding as a pillion rider with one Sathish near Perumbakkam Junction Road near Tiruvannamalai met with an accident caused by the first respondent herein who drove the Omni bus in a rash and negligent manner causing grievous injuries to the appellant herein. In view of the same, he has filed a claim petition before the Tribunal claiming a sum of Rs.5 lakhs as compensation.

b) Before the Tribunal, the witnesses P.W.1 & P.W.2 and P1 to P7 were marked as exhibits and witness RW1 and Ex.R1 was marked on the side of the claimant and respondent respectively. The Tribunal after analysing the oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent's vehicle, which was insured with the third respondent Insurance Company and directed the third respondent/Insurance Company therein to deposit a sum of Rs.96,000/- with 7.5% p.a. interest as compensation to the claimant and exonerated the second and fourth respondent therein.

c) The break-up details of the award amount passed by the Tribunal is as follows:-

Serial No.	Heads	Amount (Rs.)
1	Loss of income due to disability	70,000
2	Loss of income during treatment period	15,000
3	Transportation	2,000
4	Extra nourishment	2,000
5	Attendant benefits	2,000
6	Pain & sufferings	5,000
	Total	96,000

4. Aggrieved over the same, the appellant/claimant has preferred the present appeal for enhancement of compensation.

5. The learned counsel for the appellant/claimant submitted that the Tribunal had erred in awarding adequate compensation



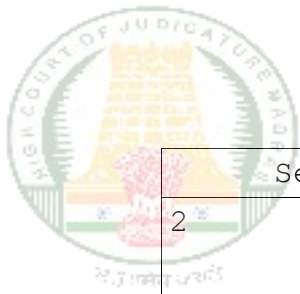
for 35% disability sustained by the claimant due to the accident and also fixed the monthly income of the claimant at Rs.3000/- which is meagre and ought to have fixed the monthly income at Rs.6000/- as claimed by the appellant and hence pleaded interference by this Court. He also submitted that the Tribunal had failed to fix reasonable amounts under the other heads and needs enhancement.

6. On the other hand, the learned counsel for the Insurance Company/third respondent herein submitted that in respect of 35% disability, the Tribunal had rightly adopted the percentage method and granted Rs.70,000/- as there is no specific plea in regard to future loss of income by the claimant. He further submitted that the Tribunal had rightly awarded the amounts under the other heads and therefore, the award passed by the Tribunal warrants no interference.

7. Heard the rival submissions made by the learned counsel on either side and also perused the materials available on record.

8. The findings of the Tribunal in fixing the liability on the part of first and third respondents and directed the third respondent Insurance Company who is the insurer of the first respondent's vehicle to pay the compensation is accepted by this Court. The Tribunal had awarded a sum of Rs.70,000/- for 35% disability suffered by the appellant/Claimant due to the accident that took place on 07.02.2005, taking into account Rs.2000/- per percentage disability is accepted by this Court as there is no material to prove the future loss of income by the appellant/claimant. Since there is no supporting document to prove the earning of the claimant as Rs.6000/- per month, the Tribunal had fixed the notional income at Rs.3000/- and awarded a sum of Rs.15,000/- towards loss of income during the treatment period for five months, which according to this Court is reasonable and warrants no interference. In respect of the other heads, considering the nature of injuries sustained by the appellant/claimant and the treatment taken by the appellant, this Court enhances the amount under the other heads namely, a sum of Rs.20,000/- towards pain and sufferings, Rs.10,000/- towards attendant benefits and Rs.5,000/- each under transportation & extra nourishment respectively. In fine, the award of compensation passed by the Tribunal is modified to Rs.1,25,000/- with 7.5% p.a. interest from the date of petition till the date of realisation. The break-up details of the award amount passed by this Court is as follows:-

Serial No.	Heads	Amount (Rs.)
1	Loss of income due to 35% disability	70,000



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Serial No.	Heads	Amount (Rs.)
2	Loss of income during the treatment period	15,000
3	Pain & sufferings	20,000
4	Attendant benefits	10,000
5	Transportation	5,000
6	Extra nourishment	5,000
	Total	1,25,000

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part. The Insurance Company/third respondent herein is directed to deposit the entire/balance amount with 7.5% p.a. interest from the date of petition till the date of realisation to the credit of M.A.C.T.O.P.No.46 of 2006, Principal Sub Court, Tiruvannamalai, within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant is entitled to withdraw the compensation amount, less the amount already withdraw if any, on filing appropriate petition before the Tribunal. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

1.The Principal Sub Court,
(The Motor Accident Claims Tribunal),
Tiruvannamalai.

2.The Record Keeper,
V.R. Section,
High Court, Madras.

+1cc to M/s.M.Malar, Advocate, S.R.No.3220
+1cc to Mrs.Elveera Ravindran, Advocate, S.R.No.3308
+1cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.3498

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CP(CO)
CB(30/09/2021)