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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 19.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3096 of 2013

R. Madhan Kumar

... Appellant/ Claimant

Vs.

1. R.M.Vellaisamy

2. National Insurance Company Ltd.,
No.66, Greaves Road, Thousand Lights,
Chennai. Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20.09.2011 passed in M.C.O.P.No.219 of 2008 by the IV Judge, Motor Accident Claims Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.P.D.Selvaraj

For respondents : Mr.S.Vadivel for R2
Notice unserved to R1

J U D G M E N T

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

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 13.12.2007.

3. The brief case of the claimant is as follows: On 13.12.2007 at about 12.30 hours, the claimant was ridding a motorcycle bearing registration No.TN-07-AS-3865 along Old Mahabalipuram Salai and his mother was travelled as a Pillion rider and while they nearing Kazhipattur, Kanchipuram District a motorcycle bearing registration No.TN-55-E-6463 hit the motorcycle driven by the claimant, thereby, the claimant and his



mother sustained grievous injuries. According to the claimant, the rash and negligent driving of the driver of the motorcycle bearing registration No.TN-55-E-6463 was the cause of accident and since the first respondent/ owner of the vehicle insured his motorcycle with the second respondent/ insurance company, both of them are liable to pay compensation.

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

5. Before Tribunal, the appellant herein and his mother have filed claim petitions in MCOP No.219 of 2008 and MCOP No. No.218 of 2019 respectively. On the side of the claimants PW1 to PW3 were examined and Ex.P1 to Ex.P11 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.1,06,600/- to the claimant/ appellant herein under various heads, as extracted hereunder.

Sl	Heads	Compensation Awarded
1	Loss of income	15,000
2	Transportation charges	3,00 0
3	Extra Nourishment	5,00 0
4	Medical expenses	8,60 0
5	Attender charges	5,00 0
6	Pain and sufferings	20,000
7	Permanent disability 25 x 2000	50,000
	Total	1,06,600

7. Heard the learned counsel for the claimant/appellant and the learned counsel appearing for the second respondent/ insurance company. I have perused the materials on record.

8. The learned counsel appearing for the appellant/ claimant submitted that the claimant was a auto driver by profession and was earning a sum of Rs.300/- per month and during the accident he sustained grievous injuries and he had



taken treatment as inpatient from 28.12.2007 to 31.01.2008 in Government General Hospital, Chennai. He also submitted that due to the accident, the claimant is not able to do his avocation and though the Doctor has assessed the disability suffered by the claimant as 30%, the Tribunal has wrong in fixing the disability only at 25% and awarded a sum of Rs.50,000/- towards "permanent disability". He further submitted that the compensation awarded under the other heads also very meagre and hence, he prayed for enhancement of compensation.

9. The learned counsel appearing for the insurance company submitted that after analysing the evidence and the materials on record, the Tribunal has awarded a just and reasonable compensation to the claimant and hence, it 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 claimant has produced the disability certificate Ex.P11, wherein, the doctor has assessed the disability suffered by the claimant as 30%. To support the above said document, the doctor was examined as PW3 and he deposed about the disability of the claimant. However, as rightly pointed out by the learned counsel appearing for the appellant, the Tribunal has fixed the disability at 25%, without any basis. Hence, as per the evidence of PW3 and the Ex.P11 and the also the medical records, it is appropriate for this court to fix the disability suffered by the claimant as 30% and a sum of Rs.3,000/- is awarded per percentage. Accordingly a sum of Rs.90,000/- is awarded towards "Permanent disability". Further, it is the contention of the claimant that he has taken treatment as inpatient from 28.12.2007 to 31.01.2009. Considering the above fact, this court is inclined to enhance the compensation awarded under the head "Attender charges" from Rs.5,000/- to Rs.7,500/-. Further, the Tribunal has not awarded any amount towards "Loss of amenities" and hence, a sum of Rs.15,000/- is awarded for the above said head. Besides, the compensation awarded under the other heads also needed some enhancement. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.



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Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of income	15,000	15,000
2	Transportation charges	3,000	5,000
3	Extra Nourishment	5,000	7,500
4	Medical expenses	8,600	8,600
5	Attender charges	5,000	20,000
6	Pain and sufferings	20,000	30,000
7	Permanent disability	50,000	90,000
8	Loss of amenities	-	15,000
	Total	1,06,600	1,91,100

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.1,06,600- to Rs.1,91,100/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,91,100/- 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



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To

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1. The IV Judge, Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
2. The National Insurance Company Ltd.,
No.66, Greams Road, Thousand Lights,
Chennai.
3. The Section Officer,
V.R.Section, Madras High Court.

+2cc to Mr.P.D.Selvaraj, Advocate Sr.18518
+1cc to Mr.S.Vadivel, Advocate Sr.18117

CMA. No.3096 of 2013

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srg 12/11/2021