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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.1417 OF 2021

(THROUGH VIDEO CONFERENCING)

Kondandappa

... Appellant/
Petitioner

Vs.

1. S.Dinakaran

2. The Branch Manager,
The National Insurance Company Limited,
Branch Office, Anuradha Complex,
III Floor, Bangalore Road,
Opp to Raja Theatre,
Krishnagiri - 635 001.

... Respondents/
Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation amount made in the Judgment and Decree dated 07.03.2020 made in M.C.O.P.No.320 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.S.P.Yuaraj

For Second Respondent : Mr.J.Chandran

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal. He has filed this appeal for enhancement of compensation awarded by the Motor Accidents Claims Tribunal, [Special Sub-Court (MACT)], Krishnagiri in the impugned Judgment and Decree dated 07.03.2020 in M.C.O.P.No.320 of 2019.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.3,95,222/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit except the default period, to the appellant/claimant.



3. The case of the appellant/claimant before the Tribunal is that on 15.08.2018 at about 19:30 hours (7.30 p.m.), the appellant/claimant while travelling in an insured Tata Tipper lorry bearing registration No.TN-70-Q-1940 in Berigai to Theertham road met with an accident. It is stated that when the said lorry was coming at the curved road situated at Chinna Theertham in Berigai, the driver of the said lorry drove the vehicle in a rash and negligent manner at an uncontrollable speed and applied break, as a result of which, the said lorry dashed on the road side stone situated on the left side and capsized. In the accident, the appellant/claimant and others sustained injuries.

4. It is submitted that the accident is of the year 2018, but the Tribunal has considered only Rs.3,000/- per percentage for awarding compensation for 45% permanent disability assessed. It is further submitted that the Tribunal has awarded only a sum of Rs.17,000/- towards loss of income for the period of two months by considering a notional income of Rs.8,500/- per month during the treatment.

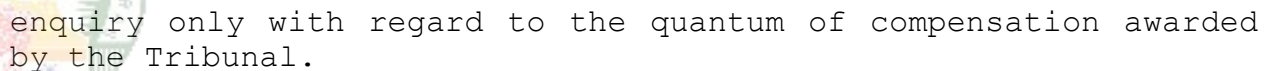
5. The learned counsel for the appellant/claimant submits that the amount awarded towards permanent disability has to be enhanced to Rs.5,000/- from Rs.3,000/- per percentage. He further submits that the Tribunal has considered very low income of Rs.8,500/- per month to award the aforesaid income of Rs.17,000/- towards loss of income for the period of two months during the treatment.

6. Defending the impugned Judgment and Decree, the second respondent Insurance Company submits that the Tribunal has awarded a just compensation and therefore prays for confirmation of the award considering the overall facts.

7. He further submits that the appellant/claimant travelled as a gratuitous passengers and was therefore not entitled to any compensation as per the decisions of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Baljit Kaur, (2004) 2 SCC 1 and in New India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223].

8. I have heard the learned counsel for the appellant/claimant and the learned counsel for the second respondent. I have perused the impugned Judgment and Decree.

9. The issue as to whether the appellant/claimant travelled as a gratuitous passenger cannot be decided in absence of any contra evidence and appeal on behalf of the second respondent Insurance Company. Therefore, this Court is confining its



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12. A sum of Rs.1,35,000/- awarded towards permanent disability and a sum of Rs.17,000/- awarded towards loss of income during the treatment period are enhanced as follows:-

Permanent Disability - 45%

Loss of income during the treatment period:-

Notional Income - Rs.12,500/- per month

13. The amount of compensation awarded by the Tribunal under the other heads is confirmed. Thus, the compensation of Rs.3,95,222/- awarded by the Tribunal is enhanced to Rs.4,98,222/- as follows:-



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Heads	Amount awarded by the Tribunal	Amount awarded by this Court
Permanent Disability	Rs. 1,35,000/-	Rs. 1,80,000/-
Medical Expenses	Rs. 1,27,222/-	Rs. 1,27,222/-
Transportation	Rs. 10,000/-	Rs. 10,000/-
Nourishment and Attender charges	Rs. 15,000/-	Rs. 15,000/-
Pain and Sufferings	Rs. 45,000/-	Rs. 45,000/-
Social amenities	Rs. 45,000/-	Rs. 45,000/-
Loss of income during the treatment period	Rs. 17,000/-	Rs. 75,000/-
Damages to clothes	Rs. 1,000/-	Rs. 1,000/-
Total	Rs. 3,95,222/-	Rs. 4,98,222/-

14. Thus, the second respondent Insurance Company is therefore directed to deposit a sum of Rs.4,98,222/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit except the default period, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

15. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest, less any amount already withdrawn, by filing suitable application before the Tribunal.

16. This Civil Miscellaneous Appeal is therefore partly allowed. No cost.

Sd/-
Deputy Registrar(TNMCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
Special Sub Court, Krishnagiri.

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.26664
+1cc to Mr.J.Chandran, Advocate, S.R.No.26871

C.M.A.No.1417 of 2021

AD(CO)
CS/26/10/2021