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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3413 OF 2014

M. Subramani

..Appellant/Petitioner

Vs.

1. M.Kali

(R1 remained exparte before the Tribunal)

2. The ICICI Lombard General Insurance

Co. Ltd., Chennai.

Chotabhai Centre, 2nd & 3rd Floors

140, Nungambakkam High Road

Chennai-600 034.

..Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.01.2014 passed in M.C.O.P.No.3856 of 2010 by the Special Subordinate Judge-II, Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.R.Kalai Arasan

For respondent : Ms.Shobana for
Mrs.R.Sreevidhya for R2
Notice unserved to R1

JUDGMENT

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



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2. The appellant/claimant has filed a claim petition before the Tribunal seeking compensation of Rs.6,00,000/- for the injuries sustained by her in a road accident that took place on 22.09.2010.

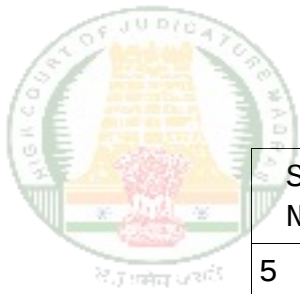
3. The brief case of the claimant is as follows: On 22.09.2010, at about 14.00 hours, when the claimant was travelling as a passenger in 108 Ambulance van from Choonambedu to Chengalpattu along the G.S.T Road, proceeding from south to north direction near the junction of Pazhaiyanur Road Petrol bunk, a lorry bearing Registration No.TN-21-AX-9835 came from the opposite direction hit against the 108 Ambulance van and capsized and as a result, the claimant and others sustained injuries and a person was died. According to the claimant, the rash and negligent riding of the first defendant was the cause of accident and since the first respondent/ owner of the vehicle insured his lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

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

5. Before Tribunal, on the side of the claimant, the claimant and Dr. K.J.Mathiazhagan were examined as PW1 and PW2 and Ex.P1 to Ex.P4 were marked. On the side of the second respondent, no oral and documentary evidence was adduced. The first respondent remained exparte.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.1,50,000/- under various heads, as extracted hereunder.

Sl No	Heads	Amount in Rs.
1	For 25% partial and permanent disability at the rate of Rs.2000/- per percent	50,000
2	Pain and sufferings	25,000
3	Extra Nourishment	10,000
4	Attender charges	10,000



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Sl No	Heads	Amount in Rs.
5	Transportation charges	10,000
6	Medical Expenses	5,000
7	Loss of income for 3 months rounded to	15,000
8	Loss of future prospects	25,000
	Total	1,50,000

Not satisfied with the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

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

8. The learned counsel appearing for the appellant/ claimant submitted that the claimant had sustained fracture lateral end of left clavicle and the doctor has assessed the disability suffered by the injured/claimant as 30%, however, without any basis, the Tribunal has reduced the disability at 25%, which is unsustainable. He further submitted that no amount was awarded towards " Loss of amenities" and the compensation awarded under the other heads are also very meagre and hence, he prayed to enhance the compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted after analysing the evidence and the documents on record, the Tribunal has rightly fixed the disability suffered by the claimant at 25% and also the compensation awarded under the other heads are reasonable. Therefore he submitted that the findings of 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 appellant/claimant sustained fracture on lateral end of left clavicla and he was treated as inpatient at



Chengalpattu Medical College Hospital from 22.09.2010 to 30.09.2010 and thereafter continued as outpatient and to prove the same, he has produced Ex.P2 discharge card. Eventhough the appellant/claimant made a claim of Rs.6,00,000/-, the Tribunal has awarded only Rs.1,50,000/-. The doctor who deposed as PW2 has assessed the disability suffered by the claimant as 30%. But, the Tribunal has wrongly assessed the disability at 25% and awarded Rs.2000/- per percentage. The Tribunal has not taken into account the grievous injuries and fracture sustained by the appellant/claimant due to the said accident. Therefore, based on the evidence of PW2, doctor who assessed the disability as well as the serious multiple injuries suffered by the claimant and the disability certificate which is marked as Ex.P4, it is appropriate for this Court to fix Rs.2,500/- per percentage for the disability of 30% suffered by the claimant. Therefore, for the disability suffered by the claimant, a sum of Rs.75,000/- (2,500 x 30) is awarded. Taking into consideration the period of treatment taken by the claimant as inpatient, the compensation awarded by the Tribunal towards loss of income is enhanced for four months from Rs.15,000/- to Rs.20,000/-. Further, this Court is inclined to award Rs.10,000/- towards loss of amenities. Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal Rs.	Compensation enhanced/ Awarded by this court Rs.
1	Partial and permanent disability	50,000	75,000 (2500 x 30)
2	Pain and sufferings	25,000	25,000
3	Extra Nourishment	10,000	10,000
4	Attender Charges	10,000	10,000
5	Transportation charges	10,000	10,000
6	Medical Expenses	5,000	5,000



Sl. No	Heads	Compensation Awarded by the Tribunal Rs.	Compensation enhanced/ Awarded by this court Rs.
7	Loss of income	15,000	20,000 (5000 x 4)
8	Loss of future prospects	25,000	25,000
9	Loss of amenities	--	10,000
	Total	1,50,000	1,90,000

Accordingly, the appellant/claimant is entitled to the enhanced compensation of Rs.1,90,000 together with 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.1,50,000/- to Rs.1,90,000/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,90,000/- 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(Audit)

// True Copy //

Sub Assistant Registrar

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Copy To

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

+1cc to Mr.R.Kalai Arasan, Advocate, S.R.No.18242

+1cc to Mrs.R.Sreevidhya, Advocate, S.R.No.18031

CMA. No.3413 of 2014

SSV(C0)
RLP(09/11/2021)