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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1887 of 2020

(Through Video Conferencing)

Arumugam

...Appellant

Vs.

1.Ananth

2.The Oriental Insurance Company Limited,
Oriental House, 2nd Floor,
No.115, Broadway Road,
Chennai - 600 108.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 17.12.2018 made in M.A.C.T.O.P.No.2722 of 2010 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai).

For Appellant : Mr.A.G.F.Terry Chella Raja

For First Respondent : No appearance

For Second Respondent: Mr.N.Sampath

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal. He has filed this Civil Miscellaneous Appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal (II Court of Small Causes, Chennai), Chennai, in the impugned Judgment and Decree dated 17.12.2018 in M.A.C.T.O.P.No.2722 of 2010.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,15,000/- as compensation together with interest at 7.5% per annum from the date claim petition till



the date of deposit, to the appellant for the injuries suffered by him, under the following heads:-

Sl. No.	Heads	Award Amount
1	Pain and Sufferings	Rs.1,00,000/-
2	Extra Nourishment	Rs. 10,000/-
3	Transportation	Rs. 5,000/-
Total		Rs.1,15,000/-

3. It is the case of the appellant before the Tribunal that on 15.08.2005 at about 04.30 p.m., when the appellant was riding a TVS 50 bearing registration No.TN-31-B-8120 on G.S.T.Road, Gudailam Junction, a Tembo Van bearing registration No.TN-37-J-2233 belonging to the first respondent insured with second respondent driven by its driver in a rash and negligent manner hit the appellant, as a result of which, the appellant sustained the following injuries:-

- i. Head Injury
- ii. Fracture of Right lower rib
- iii. Fracture of Right F.A. Radius
- iv. Loss of upper teeth A/3
- v. Dislocation of right knee

4. This appeal has been filed for enhancement of the aforesaid compensation for another sum of Rs.2,00,000/-. It is submitted that the Tribunal committed error in not awarding any amounts towards injuries / disability of the appellant. The learned counsel for the appellant further submits that the appellant may be given one more opportunity and the case be remanded back to the Tribunal to establish the nature of injuries suffered by the appellant.

5. On the other hand, the learned counsel for the second respondent Insurance Company submits that the Tribunal has awarded exaggerated amount of compensation in absence of direct evidence to substantiate the above injuries. It is submitted that the accident is of the year 2005 and the claim was filed only in the year 2010 and therefore, there is no point in referring the case back to the Tribunal for re-examination of the issue.



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6. The learned counsel for the second respondent further submits that the appellant may be referred to the Medical Board at Chennai to ascertain the disability before awarding any additional compensation.

7. I have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company. I have perused the evidences on record and the impugned Judgment and Decree.

8. Before the Tribunal, the appellant has deposed evidences as PW1 and has marked three exhibits, namely FIR, AR Copy and Discharge Summary. The Discharge Summary is from the Government Hospital, Ulundurpettai. Therefore, as far as the injuries are concerned, there is no dispute that the appellant had suffered the above mentioned injuries as stated in Ex.P3 Discharge Summary of the Government Hospital.

9. The appellant met with an accident involving the insured vehicle which stands established by Ex.P1 and Ex.P2. The injuries suffered by the appellant are not grievous injuries and have not resulted in any permanent disabilities. However, the Tribunal ought to have awarded some amounts towards injuries. At this distance point of time, it would not be fair in remitting the case back to the Tribunal to facilitate the appellant to produce the additional evidence to substantiate the injuries. That apart, as far as referring the appellant to the Medical Board is concerned, most of the injuries suffered by the appellant would have been healed due to the efflux of time and it would not be fair to ascertain the nature of injuries by subjecting the appellant to fresh medical examination.

10. Therefore, I am inclined to award a sum of Rs.50,000/- towards injuries and a sum of Rs.30,000/- towards loss of income for a period of six months (6 x 5,000) as the injuries would have been put the appellant out of action and he would not earned any amounts as a plumber during the aforesaid period of six months.

11. At the same time, the compensation of Rs.1,00,000/- towards pain and sufferings awarded by the Tribunal is excessive and same is reduced to Rs.50,000/-. A sum of Rs.5,000/- awarded towards transportation is enhanced to Rs.8,000/- and a sum of Rs.10,000/- awarded towards Extra Nourishment is also enhanced to Rs.12,000/-. Accordingly, total compensation of Rs.1,15,000/- awarded by the Tribunal is enhanced to Rs.1,50,000/- as follows:-



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Sl. No.	Heads	Enhanced Amount
1	Pain and Sufferings	Rs. 50,000/-
2	Injury	Rs. 50,000/-
3	Loss of Income for the period of six months	Rs. 30,000/-
4	Extra Nourishment	Rs. 12,000/-
5	Transportation	Rs. 8,000/-
Total		Rs.1,50,000/- -

12. The second respondent Insurance Company is therefore directed to deposit a sum of Rs.1,50,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment.

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

14. This Civil Miscellaneous Appeal is partly allowed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Motor Accident Claims Tribunal,
(II Court of Small Causes), Chennai.



2.The Section Officer,
V.R. Section,
Madras High Court.

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+1 CC to M/s.M. Malar, Advocate sr 28363.

C.M.A.No.1887 of 2020

SS (CO)
SP (08/12/2021)