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C.M.A.No.1017 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.1017 of 2006

K. Deivasigamani

.. Appellant

-Vs.-

1. S.Kolandaisamy

2. The New India Assurance Company Limited,
Branch Office, Parimalam Complex,
11/F1, E.V.N.Road, Erode – 11

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and award dated 07.03.2003 made in M.C.O.P.No.1173 of 2001 on the file of the Principal Sub Judge, Erode and prays to enhance the compensation.

For Appellant : Mr.D.Selvaraju

For Respondent-1 : Died

For Respondent-2 : Mr.M.Krishnamoorthy

JUDGMENT

The petitioner before the Motor Accident Claims Tribunal, Erode in M.C.O.P.No.1173 of 2001 is the appellant herein before this Court seeking enhancement of the Award passed by the Tribunal below.



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2. The parties are referred to in the same ranking as before the Tribunal below. The brief facts are as follows:-

The petitioner, who is aged about 35 years and a building contractor had sustained injuries in a road accident that took place on 10.06.2000 at about 09.45 p.m. On the said date, the petitioner was walking on the Erode to Chennimalai road. At which point, the moped bearing Registration No.TN 36 D 3711 belonging to the first respondent and insured with the second respondent-Insurance Company had hit the petitioner, as a result of which, he had sustained grievous injuries to his intestine and fracture to his right rib. He had claimed a sum of Rs.5,00,000/- as compensation.

3. The first respondent had remained absent and was set *ex-parte* and the second respondent-Insurance Company had filed a counter denying the allegations contained in the claim petition and seeking leave of the Tribunal to contest the O.P on all the grounds available to the insured.



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4. The petitioner had examined himself as P.W1 and the Doctor, who has assessed the disability at 30% was examined as P.W2 and the petitioner had marked Exs.P1 to P17. The respondent has neither filed documents nor adduced oral evidence.

5. The Tribunal on considering the evidence held negligence on the part of the first respondent and ultimately, awarded a sum of Rs.1,69,625/- as compensation.

6. The appellant is aggrieved by the fact that the Tribunal despite taking into account the intensity of the injuries sustained by the petitioner, the pain and suffering and mental agony undergone by him and also the future medical expenses has only granted a sum of Rs.1,69,625/-. The claim petition has been filed immediately after the accident and before the treatment that had been undergone by the claimant. A perusal of the injuries sustained and the treatment undergone by the petitioner would demonstrate the grievous nature of the injury. A perusal of Ex.A15-case summary given by the Doctor would show that the petitioner had sustained injuries to his intestine, for



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which he was admitted on 11.06.2000 at about 12.30 p.m, as he developed intense pain and he has also undergone the procedures on 11.06.2000 and on 24.06.2000 and was ultimately discharged on 17.07.2000. Once again, it appears that the patient had developed complications for which he was admitted on 15.08.2000 and was discharged only on 12.10.2000. It appears that the patient had been hospitalized for the second stint because he developed a wound dehiscence (opening of the wound) and had developed faecal fistulla, which was evidenced by Ex.A13. This clearly would show that the petitioner has undergone a long period of hospitalisation and there was complications in the procedures initially conducted on him.

7. Therefore, considering the fact that the petitioner has undergone the above hardship and a long period of hospitalization, the amount under the head of transportation charges is enhanced from Rs.2,000/- to a sum of Rs.5,000/-. The amount under the head of Extra Nourishment charges is also enhanced from a sum of Rs.5,000/- to Rs.10,000/-. Further, a sum of Rs.68,000/- is enhanced under the head of medical expenses and a sum of Rs.75,000/- is enhanced under the head of pain and suffering. Therefore, the



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revised Award would be as follows:-

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<i>Heads</i>	<i>Amount by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Transportation Charges	2,000	5,000
Extra Nourishment	5,000	10,000
Medical Expenses	52,625	1,20,625
Pain and suffering	10,000	85,000
Permanent disability	60,000	60,000
Loss of income	40,000	40,000
Total	1,69,625	3,20,625

8. The appeal is partly allowed and the Award of the Tribunal is modified, enhancing the compensation amount from **Rs.1,69,000/-** to **Rs.3,20,625/-** The respondents are directed to deposit the said amount to the credit of M.C.O.P.No.1173 of 2001 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal,



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less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

29.09.2022

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To

1. The I Additional District and Sessions Judge, Vellore.
2. The Section Officer,
V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

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