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C.M.A.No.2262 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A. No.2262 of 2012

M.Balu

... Appellant

vs.

1.N.Vijaya Babu

(1st Respondent ex-parte in Lower Court.

Hence notice to 1st Respondent may be dispensed with.)

2.M/s.Reliance Gen Ins.Co.Ltd.

No.23-24, Heavytree Buildings,
Spurtank Road, Chennai-600 031.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 20.02.2012 made in M.C.O.P.No.1041 of 2009 on the file of the Fast Track Court-IV, Additional District and Sessions Judge, Chennai.

For Appellants : Mr.K.Sivakumar

For 1st Respondent : Notice dispensed with vide EB

For 2nd Respondent : Mr.Arunkumar

JUDGMENT

The claimant in M.C.O.P. No.1041 of 2009 on the file of the Fast



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Track Court-IV, Additional District and Sessions Judge, Chennai is the appellant before this Court seeking enhancement of the compensation awarded by the Tribunal below.

2. The brief facts are as follows:

The appellant has claimed a compensation for a sum of Rs.7,00,000/- for the injury sustained by him in a road accident on 12.03.2009 involving the motor cycle belonging to the 1st respondent and insured with the 2nd respondent. He would submit that he is an auto driver aged about 32 years and earning an income of Rs.400/- per day. He would state that he had suffered grievous injuries to the head and spine as a result of the said accident. He has also suffered a complete loss of hearing in the left ear and partial loss of hearing in the right ear and also multiple injuries all over the body.

3. The 1st respondent remained ex-parte in the Lower Court and the 2nd respondent - Insurance Company has filed a counter denying the nature of the accident as set out by the appellant stating that the driver of the 1st respondent vehicle was very careful while driving and the negligence of the



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appellant has resulted in the accident.

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4. The Tribunal below after considering the evidence on record held that the 1st respondent was responsible for the accident and therefore the respondents 1 and 2 will liable to pay compensation to the appellant.

5. While dealing with the issue of the quantum of compensation, the Tribunal has taken into account the Disability Certificate that has been issued by the Doctors and which have been marked as Ex.P.11 and Ex.P.13 apart from the discharge summary Ex.P.4 and the audiogram reports Ex.P.6 and Ex.P.7 assessing the disability at 70% towards hearing impairment and 50% towards the head injury. The Disability Certificate has been assessed by P.W.2 and P.W.3 who apart from giving the Disability Certificate have also adduced evidence. The Tribunal has awarded only a sum of Rs.50,000/- towards injury, Rs.20,000/- towards treatment and other expenses and a sum of Rs.1,60,000/- towards pain and suffering, thereby awarded a total compensation of Rs.2,30,000/-. Aggrieved by the said order, the appellant/claimant is before this Court seeking an enhancement.



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6. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent / Insurance Company and perused the materials available on record.

7. A perusal of the records and the order of the Tribunal would clearly show that by reason of the accident, the appellant has sustained a severe head injury and injuries to the ear which has rendered him with a total loss of hearing in the left ear and partial loss of hearing in right ear. The appellant is a driver by profession, the loss of hearing would definitely affect his future earning capacity. Therefore, the amount granted towards injuries has to be enhanced to a sum of Rs.1,00,000/-, the amount granted towards medical and other expenses shall remain unaltered. Apart from that, the appellant is entitled to a sum of Rs.10,000/- towards transportation and a sum of Rs.10,000/- towards extra nourishment. Therefore, the Compensation awarded by the Tribunal is reworked as below:



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Injuries	Rs. 50,000/-	Rs. 1,00,000/-	Enhanced
2	Treatment and Other Expenses	Rs. 20,000/-	Rs. 20,000/-	Confirmed
3	Pain and Suffering	Rs. 1,60,000/-	Rs. 1,60,000/-	Confirmed
4	Transportation	-	Rs. 10,000/-	Granted
5	Extra Nourishment	-	Rs. 10,000/-	Granted
	TOTAL	Rs. 2,30,000/-	Rs. 3,00,000/-	

8. In the result, this Civil Miscellaneous Appeal is allowed and the compensation of Rs.2,30,000/- awarded by the Tribunal is hereby Enhanced to a sum of **Rs.3,00,000/-**. Therefore, the 2nd respondent / Insurance Company is directed to deposit the enhanced amount of **Rs.3,00,000/-** to the credit of M.C.O.P.No.1041 of 2009 on the file of the Motor Accident Claims Tribunal, Fast Track Court-IV, Additional District and Sessions Judge, Chennai together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of



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a copy of this Judgement. On such deposit being made, the claimant is permitted to withdraw the amount now determined by this Court, as apportioned by the Tribunal, along with interest and costs, after adjusting 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 claimant. No costs.

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Index : Yes/No

Speaking / Non-speaking order

ssn/ mka



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- To:
1. The Additional District and Sessions Judge,
Fast Track Court-IV,
Chennai.
 2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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P.T.ASHA, J.,

ssn/mka

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