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C.M.A.No.3520 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HON'BLE **MR.JUSTICE J.NISHA BANU**

C.M.A.No.3520 of 2013

Kumar

.. Appellant

vs.

1.M/s.Isex Fashions (P) Ltd.
No.B-6, M.G.R.Salai,
Palavakkam, Chenna 600 041.
(1st respondent remained exparte before
the Tribunal)

2.The New India Assurance Co., Ltd.,
No.45, 2nd Line Beach, Moore Street,
Chennai 600 001.

.. Respondents

Prayer.: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 26.07.2012 made in M.C.O.P.No.2845 of 2005 on the file of the Motor Accident Claims Tribunal (II Small Causes Court)Chennai.



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For Appellant : Mr.P.D.Selvaraj

For R2 : M/s.P.Kandasamy

J U D G M E N T

Aggrieved by the judgment and decree dated 26.07.2012 passed by the Motor Accidents Claims Tribunal (II Small Causes Court) Chennai in M.C.O.P.No.2845 of 2005, the injured Claimant has come up with this Civil Miscellaneous Appeal, seeking enhancement of compensation.

2. On 17.02.2007 at 7.30 hrs, when the appellant-claimant was riding Motorcycle bearing Reg.No.TN-01-R-3961 at Padur near Bazaar proceeding towards Chennai, while turning from left side to right side, the first respondent's Mini bus bearing Reg.No.T-07-E-9266 proceeding from the opposite direction, which was driven by its driver in a rash and negligent manner, dashed against the claimant. As a result of which, the claimant had sustained grievous injuries. At the time of accident, the appellant was aged about 22 years and was working as a Machine Operator in Nova Dyeing Company Limited, Kazhipattur and was earning a sum of Rs.4,000/- per month. Due to the injuries sustained by



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the appellant in the accident, he stated that he could not perform his daily routine and attend his work as before and therefore, claimed a sum of Rs.10,00,000/- as compensation by way of filing the claim petition.

3. Before the Tribunal, on the side of the appellant, P.W.1 & P.W.2 were examined and exhibits Ex.P.1 to P.17 were marked. On the side of the Respondents, no witness was examined and no document was marked.

4. The second respondent Insurance Company has filed a counter affidavit in which it was stated that the appellant was negligent and the claim is exorbitant. The offending vehicle was not in possession of valid insurance coverage, permit, fitness certificate and the driver did not possess valid driving licence.

5. After considering the pleadings, oral and documentary evidence on record, the Tribunal has awarded a sum of Rs.2,60,000/- as compensation to the injured claimant.



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6. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

7. The learned counsel appearing for the appellant contended that the Tribunal failed to note that the injured sustained serious and multiple injuries all over the body. P.W1 clearly deposed that at the time of accident, the appellant was aged about 22 years and was working as Machine Operator and he was earning a sum of Rs.4,000/- per month. Further, he deposed that he had sustained fracture of multiple contusions in the left temporal and parietal lobes, fracture of the lateral wall of the left maxillary antrum and fracture of the right temporal bone and multiple injuries all over the body. He had taken treatment as inpatient from 26.12.2004 to 12.01.2005 at Malar Hospital, Chennai and subsequently, the appellant had taken treatment as outpatient at various hospitals for a prolonged period. Because of the injuries sustained in the accident, he was unable to do his normal work and further he was unable to attend his



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occupation. Further, the learned counsel appearing for the appellant has contended that P.W.2, Orthopedic Surgeon, who clinically examined the appellant who assessed the disability also corroborated the evidence of P.W.1 and he assessed the disability at 65% . The Tribunal ought to have applied multiplier method to calculate loss of earning power and the Tribunal's awarding of compensation towards pain and sufferings, transportation are very meagre. The Tribunal ought to have awarded compensation under the heads of future medical expenses, loss of amenities of life and mental agony . Hence he prays for enhancement of compensation.

8. Per contra, the learned counsel for the second respondent Insurance Company submits that the compensation awarded to the appellant was a just compensation and there was no infirmity in the impugned judgement and decree and therefore prays for the dismissal of this Civil Miscellaneous Appeal.

9. I have considered the arguments advanced by the learned counsel



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for the appellant/claimant and the 2nd respondent Insurance Company.

This Court also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

10. From the materials available on record, it is seen that the Tribunal has held that the accident had occurred only due to the rash and negligent driving of the driver of the 1st respondent's vehicle. Ex.P.1 clearly shows that the appellant sustained multiple contusions in the brain, Ex.P.2 - C.T.Scan Report reveals the following conditions:-

“left temporal extra dural haematoma;
parenchymal contusions in the left temporal and parietal lobes;
fracture of the lateral wall of the left maxillary antrum
and fracture of the right temporal bone.”

P.W.3-Doctor has assessed the disability at 65% and the Tribunal considering the same, passed the impugned award.

11. Considering the fact that the petitioner/appellant is aged about 22 years at the time of accident and due to the injuries sustained in the



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accident, he lost his entire happiness in life, this court is of the view that the Tribunal ought to have considered the human problem with sensitive approach and ought to have applied multiplier method while awarding compensation and would have taken it as whole body disability as 100%. since a brain injury can adversely impact a victim's life.

12. Needless to say that the provisions of the [Motor Vehicles Act](#) are a social beneficial piece of legislation. In order to appreciate the intention of the Legislature and to do justice to the claimant, it is appropriate to apply the multiplier method taking the disability as 100% while considering the gravity of injuries and the age of petitioner. Hence, the compensation under the head "loss of income" is requantified as follows:-

$\text{Rs.3000/-} \times 12 \times 18 \times 100 \% \text{ disability} = \text{Rs.6,48,000/-}.$

Accordingly, The modified compensation now granted by this court is as under:-



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Loss of income : Rs.6,48,000/-.

Transportation : 10,000/-

Extra Nourishment : 10,000/-

Damage to clothes : 1,000/-

Attender Charges : 10,000/-

Medical Expenses : 55,000/-

Pain and suffering : 10,000/-

Total : 7,44,000/-

rounded off to **Rs.7,40,000/-**

13. The 2nd respondent-Insurance Company is directed to deposit the award amount of compensation of Rs,7,40,000/- [Rupees Seven lakhs forty thousand only] together with interest at 7.5% from the date of claim petition till the date of deposit, before the Tribunal, less any amount already deposited, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant /claimant is permitted to withdraw the same together with interest, less the amount already withdrawn if any, by filing suitable application before the



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14. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observation. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking : Non speaking order
kkd/nvsri

To

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

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



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J.NISHA BANU,J.

Kkd/nvsri

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