



C.M.A.No.3822 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 07.09.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.3822 of 2019

G. Ramachandhran

... Appellant/Petitioner

Vs.

1.Kamalakaran

2.M/s.Cholamandalam General
Insurance Company Limited,
IX Floor, Rajaji Road,
Peramanur,
Salem – 636 007.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the Award and Decree dated 09.11.2017 in M.C.O.P.No.168 of 2012 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Kallakurichi, Villupuram District.



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For Appellant : Mr.D.Balachandran

For Respondents : Mr.R.Sree Vidhya for R2

R1 – Served
No appearance

JUDGMENT

The petitioner is the appellant before this Court seeking an enhancement of compensation awarded in M.C.O.P.No.168 of 2012 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Kallakurichi, Villupuram District.

2.The brief facts which are necessary for disposing of the above appeal is hereinbelow narrated:

The appellant/petitioner had filed the above claim petition seeking compensation of a sum of Rs.30 lakhs for the injuries sustained by him in a road accident. It is his case that on 30.03.2012 at about 06.50p.m., when he was travelling in his two wheeler bearing



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Registration No.TN 46L 5118 on the Kallakurichi bypass road, a TATA Indica car, bearing Registration No.TN-31F-9788 came in the opposite direction driven by its driver in a rash and negligent manner at a high speed. On account of the negligent driving, the Car hit the petitioner's vehicle, as a result of which, the petitioner had sustained grievous injuries. It is his case that he is aged about 26 years and working as Gold smith. He would contend that he is earning a sum of Rs.25,000/- per month.

3.The 1st respondent/owner of the Car had not entered appearance and was therefore, set *ex parte*. The 2nd respondent/Insurance Company has filed a counter *inter alia* denying the contentions raised in the claim petition and contending that the appellant was the cause of the accident as he has ridden his motor cycle in a rash and negligent manner. Therefore, it is the contention of the 2nd respondent that the owner and the insurer of the motor cycle ought to have been impleaded as a party to the proceedings. The respondents had put the petitioner to



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strict proof that the vehicle, namely, the TATA Indica Car had a valid insurance policy and a permit and further, the driver of the Car had a driving licence. They ultimately sought to have the petition dismissed.

4.The Tribunal by its Award dated 09.11.2017 had held that the driver of the TATA Indica Car was responsible for the accident. Ultimately, the Tribunal has awarded a compensation of Rs.3,85,300/-. The Tribunal had calculated the loss on the basis of Ex.P.23 - Disability Certificate on a percentage method. Aggrieved by an inadequate compensation, the appellant is before this Court.

5.Heard the learned counsel appearing on either side and perused the papers.

6.Admittedly, the petitioner had undergone surgery for over three times and had suffered 32 stitches and undergone surgeries on his legs, hands and hip and he was taking treatment for over eight months.



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Ex.B.23 - Disability Certificate would indicate that the Doctor had assessed the disability at 90% and the Tribunal has assessed the disability at 60 %. Challenging the Award, the petitioner is before this Court.

7. Admittedly, the petitioner has undergone three surgeries and had been hospitalized for over eight months. The disability suffered by him has been assessed at 90% by the Government Medical College Hospital as seen from Ex.P.23. The petitioner has also undergone surgeries and has been inpatient over eight months. The Tribunal ought to have assessed the disability by adopting a multiplier method. Accordingly, taking into account the year of the accident and the avocation pleaded by the appellant, a notional monthly income is fixed at Rs.7,000/- and considering the fact that the disability has been assessed for the whole body, 25% is taken towards disability suffered by the Petitioners with reference to his earning capacity. The petitioner is aged about 26 years and a multiplier of 17 is the appropriate



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multiplier. Therefore, the amount under the head of loss due to the disability would be a sum of Rs.3,57,000/- (Rs.7,000/ x 12 x 17 x 25% =Rs.3,57,000/-). The amount under the head of pain and sufferings is enhanced to a sum of Rs.60,000/- and the amount under the head of transportation and extra nourishment is enhanced to a sum of Rs.15,000/- each. Therefore, taking into consideration the above aspects, the modified amount is as follows:

Loss due to the disability	-Rs.3,57,000/-
Pain and sufferings	-Rs. 60,000/-
Transportation	-Rs. 15,000/-
Extra nourishment	-Rs. 15,000/-

Total	-Rs.4,47,000/-

Therefore, the 2nd respondent Insurance Company is liable to pay a sum of Rs.4,47,000/- as compensation.

8.Accordingly, this Civil Miscellaneous Appeal is allowed. The 2nd respondent/Insurance Company is directed to deposit the entire



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amount, less the amount already deposited, with proportionate accrued interest and costs, to the credit of M.C.O.P.No.168 of 2012 on the file of the learned Subordinate Judge, Motor Accidents Claims Tribunal, Kallakurichi, Villupuram District, within a period of six weeks from the date of receipt of a copy of this order, if not deposited earlier. On such deposit, the appellant is permitted to withdraw the entire award amount with proportionate accrued interest and costs, by making necessary applications.

The claimant is directed to pay the Court fee for the compensation amount, if required. The Tribunal below shall not disburse the amount till such time as proof of payment of Court Fee has been produced by the claimant. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking order / Non speaking order
mps



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To

The Subordinate Judge,
Motor Accidents Claims Tribunal,
Kallakurichi,
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P.T. ASHA, J,

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