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C.M.A.No.3276 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.12.2022

CORAM

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.3276 of 2017

and CMP.No.19646 of 2017

T. Vijaya Kumar

... Appellant/Petitioner

VS.

1.Shaul Hammed

2.The Manager,

Reliance General Insurance Co., Ltd.,

Now the 2nd respondent having office at

No.6, Haddows Road, VI – Floor

Nungambakkam, Chennai – 6.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 18.08.2014 made in M.C.O.P.No.797 of 2009 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Judge, Thiruvallur, Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For Respondents : R1- No appearance
Mr.E.Rajadurai for R2
for M/s.M.B.Gopalan Associates

J U D G M E N T

The claimant is the appellant herein. Aggrieved against the quantum of compensation awarded by the Claims Tribunal at Rs.1,39,000/-- with interest at 7.5% per annum, the appellant is before this Court.



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2. The challenge to the appeal by the claimant/appellant is with

regard to quantum alone.

3. It is the case of the claimant/appellant that on 21.01.2008 at about 08.45 a.m., when the claimant was waiting for the bus on Chetpattu-Vandavasi Road, near Avanavadi Junction, a Car bearing Registration No.TN-20-V-5500, driven by the 1st respondent who is the driver of the vehicle, coming in the same road and was proceeding towards Vandavasi in a rash and negligent manner at a dangerous speed and dashed against the claimant and caused grievous and multiple injuries to him all over the body. Since the respondents are vicariously liable to pay compensation, the claimant has preferred the claim petition before the Tribunal. The Tribunal, after framing issues and recording evidence, has fastened the liability on the 2nd respondent/Insurance Company and ultimately quantified the compensation in the following manner:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	Permanent Disability	Rs.1,20,000/-
2.	Transportation	Rs. 3,000/-
3.	Extra Nourishment	Rs. 3,000/-
4.	Attendant Charges	Rs. 3,000/-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
5.	Pain & Suffering	Rs. 10,000/-
	Total	Rs. 1,39,000/-

4. Heard both sides and perused the materials available on record.

5. The learned counsel for the appellant/claimant has submitted that the Tribunal has failed to award compensation in a proper perspective; He further submitted that the Tribunal has awarded Rs.2000/- for each percent of disability, but it has to be awarded Rs.3000/- for disability considering the consumer price index prevailing at the time of accident. The appellant suffered right wrist fracture, right hand both bone fracture and left leg fibula bone fracture and multiple injuries all over the body. The compensation awarded at Rs.10,000/- for pain and suffering which seems to be very meager and needs enhancement under this head. The Tribunal has erred in awarding compensation of Rs.3000/- for Transport to Hospital. The appellant has taken as in-patient and out patient for a more than six months. Hence, the compensation has to be enhanced under this head also. The lower court grossly erred in determining compensation under the heads of 'extra nourishment' and 'attendant charges' of Rs.3000/- each which needs



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enhancement. It failed to award any compensation under the head of loss of earning power though he suffered 60% of disability. In any event, the total amount of compensation awarded by the Tribunal is meager and needs significant increase.

6. Per contra, the learned counsel for the 2nd respondent/Insurance Company has submitted that the Tribunal has taken each and every aspect into consideration and has awarded the just compensation which does not require any interference by this Court; in fact, the Tribunal has taken note of the evidence and documents on record and ultimately arrived at the compensation, which is perfectly valid in the eye of law. Hence, he prays to dismiss the appeal.

7. On the side of the appellant, appellant himself was examined as PW1 and the Doctor who examined PW1 was marked as PW2 and the exhibits were marked as Ex.P1 to Ex.P8. Neither witness was examined and nor documents were marked on the side of the respondents.

8. A perusal of the award of the Tribunal would go to show that



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the Tribunal has analysed the evidences of PW1/FIR and PW2/RC Book, PW3/Accident Register with regard to accident proves that the 1st respondent has caused the accident. Since the 1st respondent has insured with the 2nd respondent, the Insurance Company is liable to pay the compensation to the appellant. Ex.P4 to Ex.P8 with regard to the treatment given to the appellant/claimant would go to show that the claimant has taken treatment in hospital and he is suffering 60% of disability.

9. It is borne out from the evidence and it is observed by the Tribunal that the Doctor has assessed the disability at 60%. It is not in dispute that the claimant was aged about 14 years and he was a student studying IX Standard at the time of accident. When that be so, the amount awarded towards Transportation, Nourishment , Attendant Charges and Pain and suffering needs revisit. The other heads of compensation awarded by the Tribunal are quantified based on the settled principles of law and hence, they are confirmed as such.

10. With the sufferings stated by the Doctor in his evidence, the



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appellant has to lead his entire life. Hence, the amount awarded by the Tribunal under the head of ' Pain & Suffering, at Rs.10,000/- is enhanced to Rs..25,000/- ; the amount awarded by the Tribunal under the head of 'Attendant charges at Rs.3,000/- is enhanced to Rs.10,000/- ; the amount awarded by the Tribunal under the head of 'Nourishment at Rs..3000/- is enhanced to Rs.10,000/- ; the amount awarded by the Tribunal under the head of ' Transportation at Rs.3000/- is enhanced to Rs..10,000/-.

11.The details of the modified compensation are as follows:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	Permanent Disability	Rs.1,20,000/-
2.	Transportation	Rs. 10,000 /-
3.	Extra Nourishment	Rs. 10,000 /-
4.	Attendant Charges	Rs. 10,000 /-
5.	Pain & Suffering	Rs. 25,000/-
	Total	Rs. 1,75,000/-

12. In the result, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

13. Thus the appellant/claimant is entitled to the modified



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compensation of Rs.1,75,000/- with interest at the rate of 7.5% per annum from the date of claim petition. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount. The 2nd respondent Insurance Company is directed to deposit the modified amount of compensation, as ordered above, 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 appellant / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

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Index : yes/no
Internet : yes/no
gv

A.A.NAKKIRAN.,J

gv



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To
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1. The Chief Judicial Judge,
Thiruvallur,
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

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