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C.M.A.No.3318 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

CMA.No.3318 of 2017

S.Pradeep Kumar

.. Appellant

Vs.

1.A.S.Shahul Hameed

2. M/s.Future General India Insurance Co.Ltd.,
Plot No.27, 1 to 3rd Floor,
Vijayaraghavan Road,
T.Nagar, Chennai – 10.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 03.10.2017 made in M.A.C.T.O.P.7699 of 2013 on the file of the Motor Accidents Claims Tribunal, II Judge of Small Causes Court, Chennai.

For Appellant	: Ms.M.Malar
For Respondent No.1	: Ex - Parte
For Respondent No.2	: Ms.C.Harini
	for Mr.M.B.Raghavan

J U D G M E N T

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 03.10.2017 passed by the



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Motor Accident Claims Tribunal/ II Judge of Small Causes Court, Chennai.

in M.A.C.T.O.P.7699 of 2013.

2. The case of the claimant / appellant is that on 12.11.2013 at about 10.30 hrs, while the appellant as a pillion rider was proceeding in the motorcycle bearing Regn.No.TN-02-AL-8527 from WCC to Nungambakkam at Women Christian College, College, a Car bearing Reg.No.TN-01-AL-4639 came from south to north direction driven by the first respondent in a rash and negligent manner and dashed against the motor cycle, due to which, the appellant sustained grievous injuries. Claiming that the appellant was a student-cum-doing part time job and earning about Rs.6000/- per month and the rider of the car is solely responsible for the accident, the appellant / claimant has filed a claim petition claiming a sum of Rs.20,00,000/-.

3. The Tribunal, based on the evidence of P.W.1 and P.W.2 and perusing the exhibits in Ex.P1-FIR and Ex.P-14- Disability Certificate, has fastened the liability on the first respondent, which has to be indemnified by the second respondent / Insurer and ultimately quantified the total compensation at Rs.68,000/- with interest at the rate of 9% per annum from



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the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

4. The learned counsel for the claimant / appellant submitted that when the appellant was a student and also working in part time job in a mobile recharge shop and was earning Rs.6000/- per month and the same was proved by the evidence of P.W.1 in Ex.P11. The doctor assessed the disability of the appellant as 40% whereas the Tribunal fixed 10% as the permanent disability and awarded only a sum of Rs.3000/- per percentage. The Tribunal erred in awarding Rs.3680/- under the head of medical expenses by rejecting most of the medical bills. The Tribunal failed to award compensation under the head of mental agony and disfigurement. The Tribunal ought to award more compensation under the head of loss of income; and in any event, the Tribunal erred in awarding compensation at Rs.68,000/- as against the claim of Rs.20,00,000/-. He further submitted that the nature of the injuries sustained by the Appellant/claimant has not been disputed by the second respondent as seen from the evidence available on record. The Appellant/claimant sustained fracture of both bone right leg, injury over the right medial malleous fracture over the middle 3rd joint right shoulder dislocation and other multiple grievous injuries all over the body.



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The Doctor assessed the disability as 40% as seen from Ex.P14- disability certificate. But the Tribunal arrived 15% as disability and fixed 10% as the permanent disability . Hence, he prays for enhancement of Award amount.

5. Before the Tribunal, the Appellant/claimant has filed fourteen documents which were marked as Ex.P1 to Ex.P14 and examined two witnesses as PW1 and PW2. On the side of the second respondent/Insurance Company, neither any document was filed nor any witness examined before the Tribunal. The 1st respondent was set exparte.

6. Per contra, the learned counsel for the second respondent / Insurer submitted that the Tribunal has taken into consideration each and every aspects and has awarded just compensation, which does not require any interference at the hands of this Court. He also submitted that this respondent is not liable to pay compensation because the accident occurred solely due to the fault of the appellant only. He further submitted that the quantum of compensation claimed is highly excessive and no legal basis and not sustainable on facts and hence the monthly income fixed by the Tribunal, based on the probabilities of the case and settled principles of law, cannot be found fault with. He finally submitted that the amounts awarded



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by the Tribunal under other heads are also cannot be said to be on the higher side. Hence, he prays for dismissal of the appeal.

7. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8. Based on the evidence of P.W.1 and Exs.P-1 to ExP-14 and in the absence of any evidence or documents on the side of the respondents, the Tribunal has fastened the liability on the rider of the car, which has to be compensated by the Insurer / second respondent herein.

9. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that he was student and also doing part time job in mobile recharge shop and was earning Rs.6000/- per month, the Tribunal has taken the income at Rs.200/- per day (Rs.200 x 30 days) = 6000/- p.m. Though the disability was assessed as 15%, considering the fact and the nature of work and it can be cured by way of physiotherapy treatment, the Tribunal reduces the percentage as 10% and awarded Rs.30,000/- (Rs.3000x10) towards disability. However, considering the



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nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix the disability of the Appellant/claimant at 20%. Hence, under the head disability, the amount to be awarded to the claimant would be Rs.60,000/- (Rs.3000x20).

10. Insofar as the assessment of disability compensation at Rs.3000/- per percentage is concerned, the same is a correct assessment. However, in view of the modification of the disability from 10% to 20% by this Court, the disability compensation is enhanced to Rs.60,000/- by this Court instead of Rs.30,000/- assessed by the Tribunal.

11. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the other heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

12. In fine, the re-structured compensation, item-wise, would be thus:

Medical bills	-	Rs. 3,680/-
Disability	-	Rs.60,000/-
Attendance Charges	-	Rs. 2,000/-
Loss of income	-	Rs.12,000/-
Pain and Suffering	-	Rs.10,000/-



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Transport to Hospital	-	Rs. 5,000/-
Extra Nourishment	-	Rs. 5,000/-
Total		<u>Rs.97,680/-</u>

13. In the result, this Civil Miscellaneous Appeal filed by the claimant / appellant is **allowed**, by enhancing the total amount of compensation from Rs.68,000/- to Rs.97,680/- along with interest at the rate of 9% p.a. from the date of filing of the petition till the date of deposit amount. The second respondent shall deposit the said compensation amount as arrived by this Court now along with interest at the rate of 9% per annum from the date of petition till the date of deposit, less the amount already deposited, if any, within a period of eight weeks, from the date of receipt of a copy of this judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment. No costs.

16.12.2022

Index : Yes/No

Internet : Yes/No

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To

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