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C.M.A.No.959 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.959 of 2017

J. Ramesh

... Appellant/Petitioner

VS.

1.N. Gowthaman

(R1 set ex pate before the lower court)

2.The United India Insurance Co., Ltd.,

Motor Third Party Claim Office,

38, Anna Salai, Chennai – 600 002.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 20.06.2013 made in M.C.O.P.No.700 of 2006 on the file of the Motor Accidents Claims Tribunal, III Additional District Court, Thiruvallur, Poonamallee and enhance the award amount.



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For Appellant : Mr.Y.Jayanthi Bhaskar
for Mr.S.Mahalingam

For Respondents : Mr.P.Sankaranarayanan for R2
R1- set ex parte before the Tribunal

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.2,07,070/- with interest at 7.5% per annum, the appellant is before this Court.

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 28.06.2006 at about 03.30 p.m., when the claimant was travelling as a pillion rider on Motor Cycle bearing Registration No.TN-20-J-2578 in Southern side of Melony Street from East to West, the Van bearing Regn.No.TN-09-H-0500, driven by the 1st respondent who is driver and owner of the vehicle, in a rash and negligent manner at a dangerous speed from the opposite direction, on the extreme wrong side of the road, dashed against the motor cycle and



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caused grievous injuries to him. Since the respondent is 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.	Disability	Rs.1,20,000/-
2.	Medical expenses	Rs. 820/-
3.	Pain & Suffering, Nourishment and Transport to Hospital	Rs. 25,000/-
4.	Loss of income	Rs. 11,250/-
5.	Future Loss of Income	Rs. 50,000/-
	Total	Rs. 2,07,070/-

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; the Tribunal having found that the claimant/appellant is a Painter by avocation, failed to appreciate the documents filed in support of the same.



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He further submitted that because of the disabilities suffered by the claimant, he would be prevented from carrying out his avocation as before; that the Tribunal ought to have awarded a sum of Rs.1,00,000/- under different heads viz., pain and sufferings, Extra Nourishment, Transport to Hospital, instead of that, it has awarded a sum of Rs.25,000/- under the combined compensation of the three heads; The learned Judge failed to award compensation under the heads of 'compensation of disfiguration of face', 'Damages for mental agony', 'compensation for loss of amenities of life due to permanent disablement', 'damages for the loss of expectation of life', 'compensation for inconvenience, hardship, discomfort, disappointment, frustration and mental stress, 'medical attendance' and 'damage to clothing and articles'. In any event, the total amount of compensation awarded by the Tribunal is meager and needs significant increase.

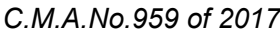
6. Per contra, the learned counsel for the 2nd respondent/Insurance Company has submitted that the Tribunal has taken each and every aspect



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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. He further submitted that the first respondent rode the motor cycle with over speed, without having a valid driving license and policy to ride the same. The delayed FIR taken by police, is a fabricated one. The said accident occurred purely due to the rash and negligence riding of the motor cycle. Hence, he prays to dismiss the Appeal.

7. A perusal of the award of the Tribunal would go to show that the Tribunal has analysed the evidence of PW2 along with Ex.P8 with regard to the treatment given to the appellant/claimant. Exs.P3 to P16 would go to show that the claimant has taken treatment in hospital. Ex.P8 -Medical bills support the case of the claimant in total and hence the amount awarded by the Tribunal towards medical expenses at Rs.820/- requires no interference. As far as the amounts awarded under the heads 'Disability', 'Loss of Income' and 'Future loss of income' at Rs.1,20,000 /-; Rs.11,250



and Rs.50,000/- respectively are concerned, the same are quantified based on the settled principles of law and hence, they are confirmed as such.

8. 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 at the time of accident was aged about 24 years and painter by avocation. When that be so, the amount awarded towards pain and sufferings needs revisit.

9. With the sufferings stated by the Doctor in his evidence, the appellant has to lead his entire life. Hence, the amount awarded by the Tribunal for combined compensation under the head of ' Pain & Suffering, Nourishment and Transport to Hospital at Rs.25,000/- are enhanced to Rs.50,000/-. The claimant had taken treatment as in – patient in Government General Hospital from 28.06.2006 to 04.07.2006 and further treated at Puthur bone setting Hospital and further treated as in–patient at Government General Hospital from 21.09.2006 to 28.09.2006. It is evident from the records produced that the appellant had sustained fractured on both bone of



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right leg; Fracture Mandible; Fracture Maxillary; Severe injuries over both eyes, injuries over cheek, injuries over forehead, Ex.P15-Disability Certificate has been issued by the Doctor in support of the aforesaid disabilities.

10. Having regard to the nature of injuries and the period of treatment, the Tribunal has awarded a sum of Rs.50,000/- on the head of future loss of income is justifiable and it is awarded accordingly. Other heads awarded by the Tribunal remains unaltered except the head 'Pain and Sufferings'.

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

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	Disability	Rs.1,20,000/-
2.	Medical expenses	Rs. 820/-
3.	Pain & Suffering, Nourishment and Transport to Hospital	Rs. 50,000/-
4.	Loss of income	Rs. 11,250/-
5.	Future Loss of Income	Rs. 50,000/-
	Total	Rs. 2,32,070/-



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(Rounded off to Rs.2,32,000/-)

12. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

13. Thus the appellant/claimant is entitled to the modified compensation of Rs.2,32,000/- 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.

15.12.2022

Index : yes/no
Internet : yes/no
speaking/non-speaking order
gv



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- To
1. The III Additional District Court,
Thiruvallur, Poonamallee.
 2. The Section Officer,
V.R.Section, High Court, Madras.



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A.A.NAKKIRAN.,J

gv

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