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C.M.A.No.226 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.226 of 2021

Faizel Mohammed Ali Jinna

... Appellant / petitioner

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai-3.

2. The New India Assurance Co., Ltd.,
No.45, Moore Street, 5th Floor,
Chennai – 1.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 20.02.2020, made in M.C.O.P.No.3204 of 2014 on the file of the Motor Accidents Claims Tribunal, Small Causes Court, (Special Sub Court No.1), Chennai.

For Appellant : Mr. K. Varadha Kamaraj

For R1 : M/s. H. Sujithra
For M/s. P. T. Ramadevi,
Standing Counsel for
Greater Chennai Corporation

For R2 : Mr. P. Kandasamy



JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation against the award passed in M.C.O.P.No.3204 of 2014 dated 20.02.2020, on the file of the Motor Accidents Claim Tribunal, Small Causes Court, (Special Sub Court No.1), Chennai.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. On 08.04.2014 at about 15.30 hours, the claimant while was riding a motorcycle bearing Registration No.TN 03 E 3803 between T.H.Road and TVK Link Road, Kodungaiyur, Chennai from East to West direction, a Lorry bearing Registration No.TN 22 CV 4860, driven by its driver in rash and negligent manner in a high speed, dashed on the backside of the motorcycle, which resulted in causing grievous injuries, and claim petition filed seeking Rs.3,00,000/- as compensation by invoking under Section 166 of the Motor Vehicles Act.



4. The first respondent, who is the owner of the lorry contested the claim and disputed the place and time of accident, nature of injuries, period of treatment and the disability sustained by the claimant. Since, the insurance policy was in force, the second respondent alone is liable to indemnify the first respondent, if compensation is awarded.

5. The second respondent, insurer of the lorry filed counter, denied the manner of accident and contended that the accident had occurred only due to the negligence on the part of the claimant. The second respondent also disputed the age, avocation, income of the claimant, nature of injuries, period of treatment and disability sustained by the claimant. Further, alleged that the first respondent has violated the policy condition and he alone is liable to pay the compensation.

6. Based on the evidence placed on record, the Tribunal in Point No.1 has held that the negligent act of the driver of the first respondent is responsible for causing the injuries to the claimant. In Point No.2, the Tribunal has held that the respondent are liable to pay the compensation to the claimant. In Point No.3, the Tribunal has quantified the



compensation and awarded a sum of Rs.77,000/- as compensation payable to the claimant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realization.

7. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimant has approached this Court seeking enhancement of compensation.

8. The learned counsel for the appellant/claimant has submitted that before the Tribunal he has marked Discharge Summary, Accident Register and X-ray Report to show that the claimant has suffered severe fracture on the left ankle and this was also substantiated by examining the Doctor-P.W.2. But, compensation has not been properly awarded as per Disability assessed by the Doctor, prays to re-fix the disability and to award more compensation. He has also relied on the Judgment of the Hon'ble Apex Court in *Chinnatambi vs. Deepa and others [2020 (1) TN MAC 617]* seeking for enhancement of compensation under the head 'Disability'.

9. Per Contra, the learned counsel for the respondent has submitted that the compensation has been properly quantified by the



Tribunal and there is no need for any enhancement hence, prays to confirm the award.

10. I have considered the rival submissions made on both sides and also perused the entire records.

11. Admittedly, P.W.2 -Private Doctor of the injured person assessed the disability and given an opinion based on the records available. The Tribunal has held that P.W.2 has not taken any X-ray for assessing the disability of the injured. The Tribunal has also raised a doubt that whether any fracture sustained by the claimant herein or not.

12. Ex.P3-Discharge Summary issued by the Government Stanley Hospital, Chennai, shows that the claimant was diagnosed with multiple injuries due to RTA. He has also directed to undergo X-ray of left foot and was recorded as follows: *“Linera Lucency visualized in navicular bone and intermedial coneiform and Lenear lucency visualized in medical aspect of talus and lateral malleolus and displaced fracture”*. After appreciating this document, the Tribunal has held that there is undisplaced fracture which is termed as linear fracture and he has undergone treatment



in the Government Stanley Hospital, Chennai for four days and he has also not subjected to any X-ray, to see that whether any disability has occurred to him or not. This Court is of the view that the above record only shows that the petitioner has sustained only linear fracture on his left foot fixing the disability as 5% by the Tribunal is reasonable and the same needs no interference.

13. However, this Court in *Chinnatambi vs. Deepa and others* [2020 (1) TN MAC 617] based on the previous Judgments of this Court in *National Insurance Company Limited vs. G. Ramesh* [2013 (2) TN MAC 583] has held that due to passage of time, the compensation awarded under percentage of disability till the year 2014, awarding compensation for a sum of Rs.4,000/- per percentage would be proper. Hence, this Court accepts the same and awarding compensation under the head 'Disability' by calculating per percentage method as Rs.4,000/- per percentage. Accordingly, the compensation awarded under the head disability is modified to Rs.20,000/- [4000 x 5]. The Tribunal has also awarded compensation under various other heads. However, while deciding the notional income for granting loss of income for temporary disablement, for two months a sum of Rs.14,000/-



[7000 x 2] was awarded by taking Rs.7,000/- as one month salary and the same is not in accordance with the norms followed by this Court for the notional income fixed for the year 2014 and the same is modified to Rs.10,000 as notional income of the claimant. Accordingly, two months compensation is awarded i.e., Rs.20,000/- [10000 x 2] under the head 'loss of disablement during treatment period'.

14. Records are also shows that even though the claimant has taken treatment in the Government Stanley Hospital, Chennai, he has been directed to undergo tests such as, CT Scan from the private hospital. Accordingly, a sum of Rs.1,500/- is awarded under the head medical expenses. The compensation awarded under other heads are concerned, the same is just and reasonable and the same is hereby confirmed.

15. Thus the compensation awarded by the Tribunal under various heads are modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	Rs.15,000/-	Rs.20,000/-	Enhanced



2.	Pain and Sufferings	Rs.15,000/-	Rs.15,000/-	Confirmed
3.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Transport Charges	Rs.2,000/-	Rs.2,000/-	Confirmed
5	Attender Charges	Rs.1,000/-	Rs.1,000/-	Confirmed
6	Loss of Earnings	Rs.14,000/-	Rs.20,000/-	Enhanced
7	Loss of Future Prospects	Rs.20,000/-	Rs.20,000/-	Confirmed
8	Medical Expenses	---	Rs.1,500/-	Granted
	Total	Rs.77,000/-	Rs.89,500/-	Enhanced by Rs.12,500/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.77,000/- is hereby enhanced to Rs.89,500/- [Rupees Eighty Nine Thousand and Five Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The first respondent is directed to deposit the award amount, now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.3204 of 2014, on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest



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and costs, less the amount, if any, already withdrawn. The Tribunal shall disburse the amount by directly giving credit to the Savings Bank Account of the claimant without any formal application. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

06.11.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Small Causes Judge, (Special Sub Court No.1),
Motor Accidents Claims Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.

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