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CMA No. 2100 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2100 of 2023

Arumugam ... Appellant

Versus

1. Rajeswari

2. Reliance General Insurance Co. Ltd.,
Reliance House, 5th Floor,
No.6, Haddows Road,
Chennai – 600 006.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 02.11.2018 made in M.C.O.P. No.1943 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.G.Vasudevan (for R2)
R1-Ex parte

J U D G M E N T



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The claimant has preferred the instant appeal seeking enhancement of compensation awarded in M.C.O.P. No.1943 of 2015 on

the file of the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai.

2. The appellant filed the claim petition stating that on 02.10.2014 at about 20.30 hours, while he was walking on a public road, the two wheeler insured with the 2nd respondent came in a rash and negligent manner dashed against him, as a result of which, he sustained grievous injuries.

3. The 1st respondent remained *ex parte* before the tribunal. The 2nd respondent filed the counter denying the averments made in the claim petition and stated that the accident took place due to the negligence of the appellant; that in any case, the compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.

4. The appellant examined himself as PW1 and the Doctor who had examined him, as PW2 and marked Ex.P1 to Ex.P8. The 2nd



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respondent examined RW1 and marked Ex.R1 to Ex.R3.

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5. The tribunal after taking into consideration the oral and documentary evidence awarded the total compensation of Rs.65,800/- to the appellant.

6. The learned counsel for the appellant submitted that the appellant sustained 'Fracture clavicle M/3 right shoulder' and the said injury is grievous in nature. PW2-Doctor, had assessed the disability at 20% after examining the appellant and Ex.P8-X-ray. The learned counsel therefore submitted that the tribunal ought not to have reduced the disability as 5% and granted compensation on that basis. The learned counsel further submitted that the award under the other heads also requires enhancement and prayed for allowing the appeal.

7. Since the 1st respondent remained *ex parte* before the tribunal, the learned counsel for the appellant made an endorsement to dispense with the notice to the 1st respondent. Hence, notice to 1st respondent is dispensed with.



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WEB COPY 8. The learned counsel for the 2nd respondent *per contra* submitted that the appellant did not subject himself for examination to the Medical Board and hence, the tribunal was right in not accepting the evidence of PW2 fully. The learned counsel further submitted that the award of the compensation under other heads, is also just and reasonable and prayed for dismissal of the appeal.

9. The only question in the instant appeal is whether the compensation awarded by the tribunal is just and reasonable?

10. This Court finds that the appellant had sustained Fracture clavicle M/3 right shoulder and he was admitted as inpatient in Government Stanley Hospital. PW2-Doctor, who had examined the appellant has assessed the disability as 20%. Ex.P8-X-ray also confirms the fact that the appellant has suffered a fracture. Considering the nature of injuries, this Court is of the view that the tribunal was not justified in reducing the disability percentage as 5% and awarding Rs.3,000/- per percentage of disability. Though, the appellant was not examined by the Medical Board, this Court is of the view that the disability can be fixed



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as 15%. Further, since the accident took place in the year 2014, the

appellant is entitled to Rs.4,000/- per percentage of disability.

Accordingly, the award under the head disability is enhanced to

Rs.60,000/-. The tribunal has not awarded compensation under the head

loss of amenities and hence, he would be entitled to Rs.15,000/- under

the said head. As regards, loss of earning during the treatment period, it

is seen that the tribunal has taken the notional income as Rs.6,000/- per

month and awarded Rs.12,000/- toward loss of earning for the period of

two months. However, considering the fact that the accident took place in

the year 2014 and the appellant has established that he was self

employed, this Court is of the view that it is just and reasonable to fix

Rs.10,000/- as notional monthly income and award Rs.20,000/- under the

head loss of earning for the period of two months.

11. The award under other heads are just and reasonable and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

S. No	Description	Amount awarded by	Amount awarded by	Award confirmed or
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		Tribunal (Rs)	this Court (Rs)	enhanced or granted
1.	Disability	15,000	60,000	Enhanced
2.	Pain and Sufferings	15,000	15,000	Confirmed
3.	Loss of Amenities	--	15,000	Granted
4.	Extra Nourishment	10,000	10,000	Confirmed
5.	Transportation	3,000	3,000	Confirmed
6.	Attender Charges	750	750	Confirmed
7.	Loss of Earnings	12,000	20000	Enhanced
8.	Loss of future prospects	10,000	10000	Confirmed
	Total	65,750	1,33,750	Enhanced by
	Rounded off to	65,800	1,33,800	Rs.68,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.65,800/- is hereby enhanced to Rs.1,33,800/- together with interest at 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The 2nd 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 (6) weeks from the date of receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the entire amount with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary court fee, if any, on the enhanced award



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amount. No costs.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

1. The Motor Accidents Claims Tribunal, Special Sub Court No.1,
Small Causes Court, Chennai.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J.

ars

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