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C.M.A.No.1055 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.1055 of 2017

S.Sai Santhosh

...Appellant

Vs.

1. V.Ganesh
(R1 set exparte in the trial court)
2. New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai – 600 001.
...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the judgment and decree passed in M.A.C.T.O.P.No.2756 of 2013 dated 11.12.2015 on the file of the Motor Accidents Claims Tribunal (Small Causes Court), Chennai.

For Appellant : Mr.C.Munusamy

For Respondents : R1 – Exparte
: Mr.J.Chandran, for R2



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JUDGMENT

Challenging the judgment and decree dated 11.12.2015 passed in M.A.C.T.O.P.No.2756 of 2013 on the file of the Motor Accidents Claims Tribunal (Small Causes Court), Chennai, the claimant has come up with this appeal.

2. The case of the appellant is that, on 31.03.2013 at about 21.15 hours, when the appellant was travelling as a pillion rider in a motorcycle bearing Regn.No.TN-06-D-6667, the rider of the said motorcycle drove the vehicle in a rash and negligent manner and suddenly lost his balance and fell down, as a result of which, the appellant also fell down and sustained injuries. Thereby, the appellant filed a claim petition claiming a compensation of Rs.40,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.10,77,000/-. Aggrieved with the said order, the claimant has come up with this appeal seeking enhancement of the compensation fixed.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver



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of the motorcycle and at the time of accident, the appellant was only aged about 19 years and due to the injuries sustained by the appellant, he sustained 75% permanent disability and the same is evident from the Disability certificate issued by the Medical Board, pursuant to the direction of this Court and due to the said accident, the appellant went to vegetative state. While so, without considering any of the above said facts, the tribunal, instead of adopting multiplier method had awarded a compensation of Rs.1,95,000/- under the head Disability by adopting percentage method, which is not sustainable. Further, the compensation awarded by the tribunal under other heads are also on the lower side and the same has to necessarily be enhanced.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation, which does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

5. Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.



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6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/claimant is with regard to the quantum of compensation awarded. It is claimed by the appellant that the appellant sustained functional disability at the rate of 75%, however, the tribunal failed to adopt multiplier method for awarding compensation and had adopted percentage method, which is wholly erroneous.

7. A perusal of the impugned award and particularly the disability certificate reveals that, the appellant was aged about 19 years at the time of accident and the nature of injuries sustained by him is of grievous in nature, and that the extent of the disability sustained by the appellant would really hamper the appellant from discharging his work. Hence, this Court holds that the disability sustained by the appellant is of functional in nature and fixes the disability sustained by the appellant at the rate of 70%.

8. It has been the view of the courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for



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the purpose of quantifying the amount receivable by them. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Syed Sadiq Vs. United India Insurance Company reported in 2014 (1) TANMAC 459***, fixing a notional income of Rs.10,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of ***National Insurance Company Limited Vs. Pranay sethi and others reported in 2017 (16) Supreme Court Cases 680***, the total income per month is quantified at Rs.14,000/-. The appellant being aged about 19 years, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors. reported in (2009) 6 SCC 121***, the loss of income to the family is arrived at Rs.14,000/- * 12 * 18 * 70% = Rs.21,16,800/-.

9. A sum of Rs.1,00,000/- has been granted to the appellant under the head of "loss of amenities", which is not sustainable and the same has to be removed and a further sum of Rs.1,00,000/- has been awarded under the head "future medical expenses", however, considering the fact that the future aspects is awarded, no compensation can be awarded under the said



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head and therefore the compensation awarded under the said head has to be necessarily interfered with.

10. Insofar as the compensation awarded under the other heads are concerned, this Court is of the view that the compensation are just and reasonable and the same does not warrant any interference of this Court.

11. In view of the above, the compensation awarded by the Tribunal is modified as under :-

Heads	Awarded by the Tribunal (in Rs.)	Awarded by this Court (in Rs.)
Disability	1,95,000/-	21,16,800/- (enhanced)
Pain and suffering	1,00,000/-	1,00,000/-
Extra nourishment	25,000/-	25,000/-
Transport to hospital	50,000/-	50,000/-
Damages to clothes	1,000/-	1,000/-
Attender charges	25,000/-	25,000/-
Medical expenses	3,31,000/-	3,31,000/-
Future medical expenses	1,00,000/-	-
Loss of amenities	1,00,000/-	-
Loss of Education	1,50,000/-	1,50,000/-
Total	10,77,000/-	27,98,800/-



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12. Accordingly, the appeal is allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.10,77,000/- to Rs.27,98,800/-**. The 2nd respondent-Insurance Company is directed to deposit the above said amount awarded by this Court to the credit of M.A.C.T.O.P.No.2756 of 2013 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter, upon production of necessary proof for payment of court fee for the enhanced compensation by the tribunal. No costs.

18.12.2023

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

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M.DHANDAPANI, J.

skt

To:

1. The Motor Accidents Claims Tribunal (Small Causes Court),
Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras.

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