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C.M.A. No.1109 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1109 of 2018

Selvamani

... Appellant

Vs.

1. Palanivelu

2. Govindan

3. United India Insurance Company Limited

Represented by its Divisional Manager

No.2, Church Street, Karaikal Town

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Award in so far as it relates to the quantum and enhance the quantum of compensation from Rs.1,24,500/- to Rs.4,24,500/- payable by the respondents to the appellant by suitably enhancing the compensation in the Award dated 04.03.2015 in M.A.C.T.O.P. No.50 of 2014, on the file of the District Judge, Presiding Officer, Motor Accident Claims Tribunal, Karaikal.

For Appellant : Mr.T.Sai Krishnan

For Respondents : R1 and R2 - Notice served, No appearance
Mr.D.Bhaskaran for R3



JUDGMENT

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The above Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation from Rs.1,24,500/- to Rs.4,24,500/- made in M.A.C.T.O.P. No.50 of 2014 dated 04.03.2015, on the file of the District Judge, Presiding Officer, Motor Accident Claims Tribunal, Karaikal.

2. The appellant is the claimant. The 1st respondent is the driver, the 2nd respondent is the owner and the 3rd respondent is the insurer of the offending vehicle namely Maruthi Omni Van.

3. The case of the claimant is that on 16.01.2013 at 3.15 p.m., he was proceeding in his motorcycle bearing Regn. No.TN-51-R-4571 along Bharathiar Road, Kottucherry and when he was coming near Anjeneyar Temple, the 1st respondent, who drove the Maruthi Omni Van bearing Regn. No.TN-02-AA-6507 in a rash and negligent manner, dashed against the claimant. Due to the said impact, the claimant sustained fracture on his left knee, wrist and multiple injuries all over the body. He took treatment at the General Hospital, Karaikal as inpatient and then at Vairam Multi Speciality Hospital.



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4. The claimant had filed a claim petition in M.A.C.T.O.P. No.50 of 2014 before the District Judge, Presiding Officer, Motor Accident Claims Tribunal, Karaikal, claiming compensation of Rs.10,00,000/- for the injuries sustained by him in the accident, against the driver, owner and insurer of the offending vehicle since the accident had occurred due to the rash and negligent act of the driver of the offending vehicle, stating that he was a LIC agent and was earning Rs.30,000/- per month and due to the accidental injuries, he could not do any work as before the accident and therefore, the 1st respondent as the driver, the 2nd respondent as the owner and the 3rd respondent as the insurer of the offending vehicle are jointly and severally liable to pay compensation to the claimant.

5. Before the Tribunal, the 1st and 2nd respondents remained ex-parte.

6. In order to substantiate the claim before the Tribunal, on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 16 documents were marked as Ex.P.1 to Ex.P.16. On the side of the respondents, no oral and documentary evidence were let in.



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7. The Tribunal, on hearing the arguments on either side and considering the materials, awarded compensation of Rs.1,24,500/- and directed the 3rd respondent who is the insurer of the offending vehicle, to pay the compensation to the claimant with cost and interest at 7.5% per annum from the date of petition i.e. 18.03.2014 till payment.

8. Aggrieved by the quantum of compensation, the claimant has filed the present appeal for enhancement of compensation.

9. The learned counsel for the appellant/claimant submitted that the quantum of compensation awarded by the Tribunal is extremely on the lower side and it does not reflect the "just compensation". The appellant/claimant was a LIC Agent and as such, his monthly income by way of commission was more than Rs.30,000/- per month, whereas, the Tribunal has awarded only Rs.15,000/- towards loss of income for three months. Further, the petitioner incurred more than Rs.2,00,000/- towards medical expenses, whereas, the Tribunal has awarded only Rs.39,500/- towards medical expenses and failed to consider the future medical expenses. Further, at the relevant point of time,



Rs.3,000/- was adopted for awarding compensation towards disability, whereas, the Tribunal has adopted only Rs.2,000/- per percentage of disability. The learned counsel would further submit that the compensation awarded under the other heads are also on the lower side which warrants interference.

10. The learned counsel appearing for the 3rd respondent/Insurance company submitted that the impugned Award of the Tribunal is substantiated by the records and thus, it is the “just compensation” and it needs no interference from this Court.

11. Heard the learned counsel for the appellant and the learned counsel for the 3rd respondent.

12. Though the learned counsel for the appellant contended that the the appellant incurred more than Rs.2,00,000/- for medical expenses and the appellant was earning more than Rs.30,000/- per month, the same have not been substantiated with oral and documentary evidence. However, as pointed out by the learned counsel for the appellant, at the relevant point of time,



Rs.3,000/- was adopted per percentage of disability. Hence, instead of Rs.2,000/-, Rs.3,000/- is adopted per percentage of disability. Accordingly, Rs.90,000/- (30% x Rs.3,000/-) is awarded towards disability. Insofar as the other heads are concerned, they are reasonable reflects "just compensation".

13. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	<i>Particulars</i>	<i>Amount Awarded by the Tribunal</i>	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	Compensation for 30% permanent disability	Rs.60,000/-	Rs.90,000/-	Enhanced
2.	Compensation for mental agony, pain and sufferings	Rs.5,000/-	Rs.5,000/-	confirmed
3.	Towards damage to cloths	Rs.1,000/-	Rs.1,000/-	confirmed
4	Towards rich and nutritious food	Rs.2,000/-	Rs.2,000/-	confirmed
5	Towards travelling expenses	Rs.2,000/-	Rs.2,000/-	confirmed
6	Towards medical expenses	Rs.39,500/-	Rs.39,500/-	confirmed
7	Towards loss of income	Rs.15,000/-	Rs.15,000/-	confirmed
	Total	Rs.1,24,500/-	Rs.1,54,500/-	enhanced



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14. The award of the Tribunal is modified by enhancing the compensation amount from Rs.1,24,500/- to Rs.1,54,500/-.

15. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.1,54,500/- to the credit of M.A.C.T.O.P. No.50 of 2014 on the file of the District Judge, Presiding Officer, Motor Accident Claims Tribunal, Karaikal, with cost and interest at the rate of 7.5% per annum, from the date of claim petition till payment as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

16. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).



17. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.

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18. In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No



To

C.M.A. No.1109 of 20



1. The District Judge, Presiding Officer,
Motor Accident Claims Tribunal, Karaikal.

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



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P.VELMURUGAN. J.

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