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C.M.A.No.2224 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2224 of 2010

B.Kantharaj Appellant

vs.

1. T.C. Dayalan

2. United India Insurance
Company Limited,
No.38, Anna Salai,
Chennai – 600 002.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.12.2008 made in M.C.O.P.No.3256 of 2005 on the file of the Motor Accidents Claims Tribunal / II Small Causes Court, Chennai.

For Appellant : Mr.S.Parthasarathy

For R2 : Mrs.R.Sree Vidhya



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JUDGMENT

This Civil Miscellaneous Appeal is focussed against the judgment and decree passed in MCOP.No.3256 of 2005 on the file of the Motor Accidents Claims Tribunal/ II Court of Small Causes, Chennai. This Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation.

2. Claim petition was filed under Section 166 of Motor Vehicles Act, read with Rule 3 of Motor Accidents Claims Tribunal Rules, claiming compensation of Rs.7,00,000/- for the injuries sustained by the appellant / claimant in a road traffic accident that occurred on 11.11.2004. This Civil Miscellaneous Appeal has been preferred by the injured for an enhancement of compensation.

3. The Tribunal after hearing both sides and upon consideration of oral and documentary evidence has granted compensation of Rs.1,80,385/- with interest at the rate of 9.5% per annum from the date of petition till the



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date of deposit.

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4. The learned counsel appearing for the Appellant, Mr.V.Ramesh, would strenuously argue that the injured was a 29-year-old person who was working as an electrician at the relevant point of time and was earning a sum of Rs.10,000/- per month. On account of the accident, he sustained a fracture of C4-C5 and was under treatment for about 18 days as an in-patient at Sri Balaji Hospital. It is his further argument that the doctor assessed the disability as 40% and without any reason, the Tribunal took the disability as 35% and granted Rs.35,000/- which is very less. He would also further contend that the amount awarded for pain and suffering, transport expenses, extra nourishment and for loss of income during the treatment period are not sufficient and he prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the Insurance company would vehemently contend that the appellant did not file any further treatment records and also considering the injuries sustained by the appellant, the Tribunal has granted compensation for a sum of



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Rs.1,80,385/- is a well reasoned order and need not be interfered with.

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6. Heard the arguments of Mr.S.Parthasarathy, learned counsel appearing for the appellant and Mrs.R.Srividhya, learned counsel appearing for the Insurance company and perused the materials on record.

7. At trial, on the claimant's side, the injured and the doctor who assessed the disability were examined as PW.1 and PW.2. Ex.P.1 to Ex.P. 6 were marked. The discharge summary of the injured person is Ex.P.1. Copy of wireman training certificate is Ex.P.3. Neither any oral evidence was let in nor any documents were marked by the respondent's side.

8. It is the evidence of the injured PW.1 B.Kantharaj, that on 11.11.2004 at about 18.30 hours when the appellant was traveling as a pillion rider on a motor cycle bearing Registration No.TN 22 T 6088 proceeding from Butt Road to St. Thomas Mount and waiting to turn the two-wheeler, at that time, a Tata Safari Car bearing Registration No.TN-22-T-0123 came from north to east in a rash and negligent manner hit the two-wheeler from behind and due to the said impact, the appellant sustained grievous injuries, is not in dispute.



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WEB COPY 9. From the evidence of PW.1 coupled with discharge summary Ex.P.1, it transpires that the appellant suffered fracture of C4-C5 and he took treatment as an in-patient at Sri Balaji Hospital for about 18 days, where he had undergone surgery. The disability certificate was issued by PW.2, Dr.N.Saichandran, who assessed the disability at 40% and the evidence of the said Doctor was that he was not able to do his work as before he did.

10. According to the claimant, he was working as an electrician and earned a sum of Rs.10,000/- per month. The wireman training certificate copy is Ex.P.3. He has completed the technical course for wiremen. The date of accident is on 11.11.2004. This Court deems it fit to fix the monthly income at Rs.5,500/- per month.

11. That apart, fractures C4 and C5 are vertebrae form the mid section of the cervical spine near the base of the neck. Any injury in vertebrae is undoubtedly severe injury of all spinal cord injuries. The reason being that, apart from the fracture, damage is caused to the Central Nervous



System. The C4 vertebrae contains nerves that run in the diaphragm, which

helps us to breathe by contracting and pulling air into the lungs. It is

located in close proximity to the Thyroid Cartilage. So, for a person who

suffered fracture of C4-C5, they would have difficulties in breathing, trouble

in bladder and bowel function and difficulties in moving the arms.

Therefore, considering the impact of the injury, the disability is taken at

40% and the amount of Rs.2,000 per percentage is granted. Due to the

said fracture, the 29- year-old appellant at the relevant point of time has to

face the difficulties of walking with luggage, climbing stairs, lifting weight

and he has to be very careful hereafter. Therefore, for pain and suffering, an

amount of Rs.10,000/- is granted in addition to the amount already granted,

for Transport expenses an amount of Rs.4,000/- is granted, for loss of

earning an amount of Rs.13,000/- is granted. In all other aspects, the

amount awarded by the Tribunal appears to be reasonable and therefore it is

not necessary to interfere with the same. Thus, the Compensation awarded

by the Tribunal is re-worked as tabulated below:



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<i>S.No</i>	<i>Heads</i>	<i>Tribunal</i>	<i>High Court</i>	Award confirmed or enhanced or granted
1.	For partial permanent disability	Rs.35,000/-	Rs.80,000/-	Enhanced
2.	For Pain and Suffering	Rs.20,000/-	Rs.30,000/-	Enhanced
3.	For Transport Expenses	Rs.1,000/-	Rs.5,000/-	Enhanced
4.	For Extra nourishment	Rs.4,000/-	Rs.4,000/-	Confirmed
5.	For Damages and cloth	Rs.1,000/-	Rs.1,000/-	Confirmed
6.	For Medical Expenses	Rs.99,385/-	Rs.99,385/-	Confirmed
7.	For loss of earning during the treatment period	Rs.20,000/-	Rs.33,000/-	Enhanced
	Total	Rs.1,80,385/-	Rs.2,52,385/-	Enhanced by Rs.72,000/-

Rounded off to Rs.2,52,000/-

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,80,385/- to Rs.2,52,000/-.

(iii) The 2nd Respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.2,52,000/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.3256 of 2005 on the file of MACT/II Court of Small Causes,



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Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

29.09.2023

Index : Yes/No
Speaking / Non-speaking order
drl

To:

1. The Motor Accident Claims Tribunal,
The II Small Causes Court, Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

drl

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