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C.M.A. No. 1146 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1146 of 2021

C. Logaprabhu ... Appellant / Petitioner

Vs.

1. P. Sudhakar
2. The Oriental Insurance Company Limited,
115/116, Prakasam Salai,
Chennai - 600 118. ... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 02.11.2019 passed in M.A.C.T.O.P. No. 2947 of 2015 on the file of II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai

For Appellant	:	M/s. M. Malar
For R1	:	No Appearance
For R2	:	Mr. N. Sampath



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JUDGMENT

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This appeal has been filed by the claimant seeking enhancement of compensation awarded in M.A.C.T.O.P. No. 2947 of 2015, dated 02.11.2019 on the file of II Judge, Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, wherein the Tribunal has awarded a total compensation for a sum of Rs.1,08,400/- along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal. The case in brief is as follows.

3. The case of the claimant is that on 28.01.2015 at about 05:10AM, the claimant was riding a Hero Honda Motorcycle bearing Registration No. TN-02-AB-1455 from north to south direction at Mogappair east, Pari salai. At that time, a Mahindra Maxi Cab bearing Registration No. TN-20-AL-7063 driven by its driver in a rash and negligent manner, came at a very high speed and hit on the claimant's vehicle and caused grievous injuries to the claimant. A criminal case was also registered



against the driver of the Maxi Cab in Cr.No.66/TM1/2015 on the file of the V-5, Thirumangalam Traffic Investigation, Chennai -49. Due to the injuries sustained, the claimant has come forward with the claim petition seeking compensation for a sum of Rs.10,00,000/- against the respondents under section 166 of the Motor Vehicles Act.

4. The first respondent is the owner and the second respondent is the insurer of the Mahindra Maxi Cab bearing Registration No.TN-20-AL-7063 respectively. The first respondent has filed a counter denied all the allegations contained in the claim petition and stated that the insurance policy is very much in force at the time of accident, hence the second respondent is liable to pay compensation to the claimant. He has also contended that the compensation claimed under various heads is very high and hence, prays to dismiss the claim petition.

5. The second respondent - insurance company has filed a counter denying all the allegations contained in the claim petition and contended on the ground that the said Maxi cab was not involved in the accident and the compensation claimed under various heads is also on the



higher side, hence prays to dismiss the claim petition.

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6. Before the Tribunal, on the side of the claimant, P.W.1- the claimant himself was examined and Exs.P.1 to P.10 were marked, on the side of the respondent, no witnesses were examined and no exhibits were marked. The disability certificate issued by the medical board is marked as Ex.C.1 before the Tribunal.

7. Based on the evidence placed on record, the Tribunal in point Nos.1 & 2, has held that the accident was occurred due to rash and negligent driving of the driver of the first respondent's Maxi Cab bearing Registration No.TN-20-AL-7063 and the claimant is entitled to get compensation. In point No.3, the Tribunal has quantified and granted compensation for a sum of Rs.1,08,400/- (Rupees One Lakh Eight Thousand and Four Hundred only) along with the interest @ 7.5% per annum from the date of filing of claim petition till the date of realization. In point No.4, the Tribunal has held that since there is a valid insurance policy at the time of the accident, the second respondent - insurance company is liable to indemnify the first respondent and to pay compensation to the claimant.



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8. Aggrieved over the award, this appeal has been filed by the claimant seeking enhancement of compensation and the respondents has not preferred any appeal against the award of the Tribunal.

9. The learned counsel appearing for the claimant has submitted that the Tribunal has not properly fixed the compensation and failed to consider the injuries sustained by the claimant such as fracture on clavicle bone at right shoulder and grievous injury on the head, which resulted in causing disability to the claimant. The claimant was not able to continue his earlier avocation due to the injuries sustained but the Tribunal instead of adopting multiplier method for considering the loss of earning capacity, granted compensation of Rs.60,000/- (Rupees Sixty Thousand only) by adopting percentage method, which requires modification. She further submitted that the award of Tribunal under various other heads are also on the lower side, hence prays to enhance the compensation.

10. The learned counsel appearing for the insurance company has submitted that based on the evidence placed on record, the Tribunal has



awarded a just compensation, hence prays to confirm the same.

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11. Heard the submissions made on both sides and perused the materials available on record:

12. The claimant was subjected to medical board for assessing his disability and the disability fixed by the medical board is 20%, which is also marked as Ex.C1. The Ex.P.3 and P.4 - Treatment records, shows that the claimant has sustained clavicle fracture on the right shoulder and undergone Ortho treatment. The Ex.P.2 - injury report issued by Raj Nursing Home, dated 28.01.2015 shows that the claimant has sustained head injury and deformity in right shoulder clavicle. Based on the above injuries, the medical board has assessed the claimant and fixed his disability as 20% partial permanent disability.

13. Admittedly, in this case, the claimant is not a manual worker and is aged about 53 years and submitted that he is working as a Clerk in a private trading firm. There is also no evidence placed on record to show that, the injuries sustained by the claimant has resulted in loss of his earning



capacity. Even though, the Tribunal has not discussed in detail regarding the nature of injuries sustained, the disability certificate issued by the medical board, which is marked as Ex.C.1 is sufficient to show that the disability sustained by the claimant is not a functional permanent disability, it is only a partial disability. With the above observations, this Court is of the view that the Tribunal has rightly followed the percentage method and fixed Rs.3,000/- per percentage of disability as per the norms followed by this Court, hence, this Court is of the view that the award of the Tribunal under the head disability is proper and the same is hereby confirmed.

14. The compensation awarded under the head pain and suffering is concerned, the Tribunal has awarded Rs.10,000/-, but by considering the nature of the injuries such as Right clavicle fracture and head injury, the quantum of compensation granted under the head pain and suffering requires modification and the same is enhanced to Rs.20,000/-. The Tribunal has awarded only Rs.200/-, under the head attender charges but on perusal of Ex.P.3 and Ex.P.4 - treatment records, shows that the claimant has undergone treatment from 28.01.2015 to 30.03.2015, hence, this Court is of the view that the attender charges fixed by the Tribunal is on



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the lower side and the same is modified to Rs.5,000/-. Apart from this, the compensation awarded by the Tribunal under various other heads are just and the same are hereby confirmed.

15. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Disability (20%)	60,000/-	60,000/-	Confirmed
2.	Pain and Suffering	10,000/-	20,000/-	Enhanced
3.	Extra Nourishment	5,000/-	5,000/-	Confirmed
4.	Transport to Hospital	5,000/-	5,000/-	Confirmed
5.	Damages to clothes	500/-	500/-	Confirmed
6.	Attender charges	200/-	5,000/-	Enhanced
7.	Medical expenses	7,664/-	7,664/-	Confirmed
8.	Future Medical expenses	5,000/-	5,000/-	Confirmed
9.	Loss of income	10,000/-	10,000/-	Confirmed
10.	Loss of Amenities	5,000/-	5,000/-	Confirmed
	Total Compensation	1,08,364/-	1,23,164/-	Enhanced



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16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,08,400/- is hereby enhanced to **Rs.1,23,164/- [Rupees One Lakh Twenty Three Thousand One Hundred and Sixty Four only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of realization of compensation amount, excluding default period if any. The second respondent - insurance company is directed to deposit the amount awarded 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.A.C.T.O.P. No.2947 of 2015 on the file of the II Judge, Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be



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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:

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

K. RAJASEKAR, J.

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