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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 274 of 2022

Prakash ... Appellant

Versus

1. Kulandaivel
2. Murugan
3. The Reliance General Insurance Company Limited Mumbai.
4. The Reliance General Insurance Company Limited Branch at Erode. ... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 02.03.2020 made in M.A.C.T.O.P. No. 361 of 2018 on the file of the Motor Vehicle Accidents Claims Tribunal, Special Subordinate Judge, Erode.

For Appellant : Mr.C. Paraneedharan
For RR 1&2 : Exparte before the Tribunal
For RR 3&4 : Mr.P. Suresh Srinivasan

JUDGMENT

The above appeal is filed by the claimant seeking enhancement of compensation for the injuries sustained by him in the road accident which

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occurred on 13.08.2017.

2. According to the claimant, on 13.08.2017 while the claimant was riding his motorcycle the rider of the 2nd respondent drove the motorcycle in a rash and negligent manner and dashed against the claimant's motorcycle causing him grievous injuries. According to the claimant, he was aged about 34 years at the time of accident, was working as coolie and earning a sum of Rs.15,000/- per month. The claimant therefore filed the claim petition claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him.

3. The respondents 1 and 2 who are the driver and the owner of the offending vehicle, remained ex-parte before the Tribunal. The 3rd and 4th respondents who are the insurer of the second respondent, contested the claim petition by filing a detailed counter affidait denying all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

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4. Before the Claims Tribunal, the claimant examined himself as PW1 and one other witness was examined as PW2 and Ex.P1 to Ex.P15 were marked in support of the claim. On the side of the respondents, one witness was examined as RW1 and Ex.R1 and Ex.R2 were marked.

5. The Claims Tribunal, on an assessment of the entire evidence on record, rendered a finding of negligence against the first respondent (i.e.) the rider of the 2nd respondent's motorcycle. On the issue of the liability the Tribunal held that the Insurance Company was bound to satisfy the award and thereafter, recover the same from the owner/2nd respondent. The Claims Tribunal assessed the compensation at Rs.3,80,000/- along with 7.5% interest. Not satisfied with the award passed by the Tribunal, the claimant has filed the above appeal seeking enhancement of compensation.

6. The finding of the Tribunal on “negligence” and “liability” is confirmed, as the respondents have not filed any appeal and the appeal is filed by the claimant seeking enhancement of compensation.

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7. The learned counsel for the appellant submitted that the Tribunal erred in adopting the unit method. The learned counsel further submitted that the tribunal having adopted the unit method, ought to have awarded Rs.5,000/- per percentage of disability following the judgment of this Court in **M. Chinnathambi** v. **Deepa and another, decided on 10.01.2020 in CMA.No. 4645 of 2019**. The counsel further submitted that the award of the Tribunal towards "hospital expenses", "nourishment charges" and "attender charges" deserved to be enhanced.

8. The learned counsel for the respondents, on the other hand, submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

9. I have heard both the learned counsels and perused the materials available on record.

10. It is seen that the Tribunal awarded Rs.3,000 per percentage of disability for assessing the "loss of permanent disability" and "loss of earning power". Following the judgment of this Court in

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M.Chinnathambi v. **Deepa and another,** this Court fixes Rs.5,000/- for 1% of disability. The loss towards permanent disability and loss of earning capacity is assessed at Rs.1,10,000/- (5000x22%). Therefore, the award of the Tribunal towards "permanent disability" is modified. The claimant is therefore entitled to Rs.1,10,000/- towards permanent disability and loss of earning capacity.

11. The learned counsel for the appellant has rightly submitted that the award of the Tribual towards Transport to Hospital, attender charges and Extra nourishment needs to be enhanced.

12. On perusal of the records, it is seen that the claimant was hospitalized for 17 days and therefore, I am of the view that the award of the Tribunal towards "Transport to Hospital" deserves to be enhanced from Rs.7,000/- to Rs.17,000/-. The award towards Extra Nourishment is enhanced from Rs.8,000/- to Rs.15,000/- and the award towards "attender charges" is enhanced from Rs.8,000/- to Rs.15,000/-.

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13. In view of the above discussion, the award of the Tribunal is modified as follows:-

S.No.	*Various Heads*	*Award of the Tribunal (Rs.)*	*Award of this Court (Rs.)*
1.	Loss of Earnings	56,000	56,000
2.	Transport to Hospital	7,000	17.000
3.	Extra Nourishment	8,000	15.000
4.	Attender Charges	8,000	15.000
5.	Future Medical Expenses	---	---
6	Damages for clothes and Articles	2,000	2,000
7	Medical Expenses	1,63,000	1,63,000
8	Pain and Sufferings	70,000	70,000
9	Permanent Disability and Loss of Earning Power	66,000	1,10,000
Total		**3,80,000**	**4,48,000**

14. In view of the above, the claimant shall be entitled to Rs.4,48,000/- along with interest at 7.5% from the date of the claim petition till the date of deposit. The learned counsel for the 3rd respondent/Insurance Company submitted that the compensation amount along with accrued interest was already deposited before the Tribunal. It is further submitted by the learned counsel for the 3rd respondent/Insurance Company that the Tribunl directed the second respondent to pay and recover. The direction issued to the 3rd respondent

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by the Claims Tribunal to pay and recover is confirmed. It is made clear that the Insurance Company shall satisfy the enhanced compensation and thereafter recover the same from the second respondent.

15. In view of the above said discussions, there shall be a direction issued to the Insurance Company to deposit the balance enhanced compensation amount of Rs.68,000/- along with 7.5% interest within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant shall be entitled to withdraw the same by making appropriate application before the Tribunal.

16. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

14.06.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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1. The Special Subordinate Judge,
   Motor Accidents Claims Tribunal, Erode.

2.The Section Officer,
   V.R.Section, High Court, Madras.

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N.MALA.J.,

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