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C.M.A.No.825 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.825 of 2020

C.Sampath Kumar

... Appellant /Petitioner

vs.

1.Mrs.Thahira Parveen

2.M/s.United India Insurance Co.Ltd.,

No.38, Anna Salai,

Chennai-600 002.

... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award passed by the Motor Accident Claims Tribunal / V Judge, Small Causes Court at Chennai, in M.C.O.P.No.1452 of 2006 dated 16.03.2018.

For Appellant : Mr.T.G.Balachandran

For 1st respondent : On endorsement,
notice is dispensed with

For 2nd respondent : Mr.S.Arunkumar

JUDGMENT

Not being satisfied by the award passed in M.C.O.P.No.1452 of 2006 dated 16.03.2018, on the file of Motor Accident Claims Tribunal / V



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Court of Small Causes, Chennai, the claimant herein has filed this Civil Miscellaneous Appeal for enhancement of compensation.

2. The claim petition was filed under Sections 166, 140 of Motor Vehicles Act, 1988 and Rule 3 of Motor Accident Claims Tribunal Rules, claiming compensation of Rs.10,00,000/- (enhanced as per order in M.P.No.4186 of 2012 dated 11.01.2013) for the injuries sustained by the appellant in a road accident that occurred on 18.03.2006.

3. The learned Tribunal after hearing both sides and upon consideration of oral and documentary evidence has passed an award for a sum of Rs.2,37,700/- with 7.5% interest from the date of filing of petition till the date of deposit holding that the respondents 1 and 2 are liable for payment of compensation.

4. The learned counsel appearing for the appellant Mr.T.G.Balachandran would strenuously contend that the appellant was at 17 years old at the relevant point of time, while he was riding as pillion in a motor cycle bearing Reg.No.TN-07-D-4452 along Connon Smith road, an Ambassador car bearing Reg.No.TN-04-E-8013 came in a rash and negligent manner from the opposite direction and dashed on the motor cycle. Eventually, the appellant suffered fracture of both bone left leg. It is



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his further argument that the disability assessed by PW2-Dr.Mathiazhagan at 50%. He would claim that the claimant suffers from shortening of leg by 3 cms, hence by drawing attention of this Court to the judgment of the Hon'ble Supreme Court rendered in **Master Mallikarjun vs. Divisional Manager, National Insurance Co. Ltd., & Another** reported in **2013(2) TN MAC 338 (SC)**, in order to grant a just compensation pleaded to invoke multiplier method and prayed for enhancement of compensation.

5. Per contra, the learned counsel for the Insurance Company Mr.S.Arunkumar would vehemently contend that the disability assessment should have been made by the Doctor who treated the appellant. As per the evidence of PW1-Mr.C.Sampath Kumar that he has been drawing Rs.30,000/-, would go to show that he has no functional disability. He would further contend that the trial Court after relying upon the oral and documentary evidence has passed a well reasoned order and needs no interference.

6. Heard the arguments of the learned counsels for both sides and perused the entire materials available on record.

7. It is the evidence of PW1 that on 18.03.2006 at about 13.15 hrs.,



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when he was travelling as pillion in a motor cycle bearing Reg.No.TN-07-D-4452 along Conron Smith road, proceeding towards south direction, an Ambassador Car bearing Reg.No.TN-04-E-8013 came in a rash and negligent manner from the opposite direction and dashed on the motor cycle. Due to the impact, the appellant herein suffered fracture of both bone left leg, is not in dispute.

8. From the evidence of PW1, coupled with PW2 Dr.Mathiazhagan's evidence and discharge summary Ex-P4 issued by Government Royapettah Hospital, Chennai, it appears that the appellant due to the accident suffered fracture of both bones left leg and external fixator was fixed and then removed. It is the evidence of PW2-Dr.Mathiazhagan that due to Grade-III fracture of both bones left leg, he would face difficulties in climbing the stairs and fixed the disability at 50%. The appellant had taken further treatment in the month of December 2006 is evident from the treatment record of Voluntary Health Services-Ex.P6. Based on the medical records and oral evidence as discussed supra, this Court deems fit to fix the disability at 35%. At the time of examination, PW1-Mr.C.Sampath Kumar was working in Dubai and earning Rs.30,000/- p.m. Even on 02.12.2006, 8 months after the accident, he claims that he had complaints in walking and he had restricted movements only, and with the



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support of walker he was said to be walking. The Tribunal has fixed the disability at 25% and granted Rs.3,000/- per percentage. Hence, an amount of Rs.30,000/- is granted for disability suffered in addition to the amount already awarded. For pain and sufferings and for transport expenses an amount of Rs.20,000/- and Rs.10,000/- are granted in addition to the amount already awarded. For loss of amenities an amount of Rs.30,000/- is granted in addition to the amount already granted. The appellant due to the injuries, suffers shortening of left leg by 3 cms. Therefore, for loss of marriage prospects, an amount of Rs.75,000/- is granted. In all other aspects, the award of the Tribunal appears to be reasonable and needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Pain and Sufferings	Rs. 20,000/-	Rs. 40,000/-	Enhanced
2	For Transport and Extra Nourishment	Rs. 10,000/-	Rs. 20,000/-	Enhanced
3	For Loss of Earning Capacity due to Disability	Rs. 75,000/-	Rs.1,05,000/-	Enhanced
4	Expenditure incurred for Extra tuition fees	Rs. 15,000/-	Rs. 15,000/-	Confirmed
5	For Attender Charges	Rs. 15,000/-	Rs. 15,000/-	Confirmed



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
6	For Loss of Amenities	Rs. 10,000/-	Rs. 40,000/-	Enhanced
7	For Medical Bills	Rs.1,19,106/-	Rs.1,19,106/-	Confirmed
8	For Loss of Marriage Prospects	NIL	Rs. 75,000/-	Granted
	Total	Rs.2,64,106/-	Rs.4,29,106/-	
	Less 10% contributory negligence committed by the rider of the petitioner's travelled in a motorcycle	Rs.26,410.60	NIL	
		Rs.237,695.40		
	Rounded off to	Rs.2,37,700/-	Rs.4,29,000/-	

9. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.2,37,700/-** to **Rs.4,29,000/-** which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The Compensation awarded by the Tribunal is enhanced from **Rs.2,37,700/-** to **Rs.4,29,000/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit



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the enhanced compensation amount i.e., **Rs.4,29,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of numbering of petition i.e., 13.04.2006 till the date of deposit to the credit of M.C.O.P.No.1452 of 2006, on the file of Motor Accident Claims Tribunal / V Judge, Small Causes Court at 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/claimant is at liberty to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellant/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.

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

To:

1. The Motor Accident Claims Tribunal,

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V Judge, Small Causes Court,
Chennai,

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

R.KALAIMATHI, J.,

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