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C.M.A.No.441 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 441 of 2012

P. Arjun

.. Appellant

Versus

1.Dr.Maria Joseph Soundarraaj

2.M/s.Bajaj Allianz General Insurance
Company Limited
C/o.Motor Third Party Claims Offices
No.25/25, 4th Floor, Prince Towers
College Road
Chennai-600 006.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 12.04.2011 made in MCOP No.776 of 2008 on the file of the Motor Accidents Claims Tribunal/V Judge, Small Causes Court, Chennai.

For Appellant	:	Mr. T.G. Balachandran
For Respondents	:	Mr. N. Somasundaram for R2 R1 - Exparte

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JUDGMENT

WEB COPY This appeal has been filed by the claimant seeking enhancement of compensation than the one awarded in the award dated 12.04.2011 passed by the Motor Accident Claims Tribunal/ V Judge, Small Causes Court, Chennai, in MCOP No.776 of 2008.

2. The Motor Accidents Claim Tribunal, under the impugned award, has directed payment of compensation of Rs.1,23,800/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Disability of 45% at Rs.2000 per percentage	90,000.00
Pain and suffering	15,000.00
Medical Expenses	4,795.00
Extra Nourishment	3,000.00
Transport to hospital	1,000.00
Damages to cloths and articles	1,000.00
Attender charges	9,000.00
Total	1,23,795.00 rounded off to Rs.1,23,800/-



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3. As per the claim petition, on 18.01.2008, as a result of a motor accident caused by the vehicle owned by the first respondent and insured with the second respondent, the Appellant/claimant has sustained fracture in his nasal bone, cut injury over tongue and multiple injuries all over his body. He therefore preferred a claim before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained by him. The Motor Accident Claims Tribunal had directed the respondents to pay the Appellant/claimant, the aforesaid compensation.

4. Before the Tribunal, the Appellant/claimant has filed ten documents which were marked as Ex.P1 to Ex.P10 and examined two witnesses as PW1 and PW2. On the side of the 2nd respondent/Insurance Company, neither any document was filed nor any witness was examined. The 1st respondent, owner of the vehicle, was set exparte.

5. The learned counsel for the Appellant/claimant submitted that the nature of the injuries sustained by the Appellant/claimant was proved and it include fracture of nasal bone, fracture of left post glenoid tubercle besides



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scalp haematoma in right frontal region. As per the certificate of the Doctor, the injuries are partial permanent. The Appellant/claimant was hospitalized for a period of 4 days at Malar Hospitals, Chennai as seen from exhibit P2 discharge summary. The Appellant/claimant was a B.Sc., Bio Technology student, aged 20 years at the time of the accident. The Tribunal having accepted the disability assessed by the doctor/PW2 at 45%, has failed to adopt the multiplier method to determine the compensation. The Tribunal also has not awarded any amount towards medical expenses even though the xerox copy of the Ex.P3 and P8 medical bills were duly attested by the authorised Medical officer. Further, no amount was awarded under the head loss of amenities and disfigurement due to the fracture of the facial bones. In any event, the compensation awarded under the head of pain and suffering is also very low and not befitting the nature of injuries suffered by the claimant. Hence, the learned counsel for the appellant prays for enhancement of Award amount.

6. The learned counsel for the second respondent/Insurance Company submitted that the injuries sustained by the appellant/claimant are



curable one. Since the appellant/claimant was a B.Sc., Bio Technology student and aged 20 years at the time of accident, he could withstand the injuries suffered and they were cured within a short period. In any event, there is no functional disablement suffered by the appellant and therefore, the disability compensation was awarded by the Tribunal by adopting the percentage method. The learned counsel further contended that when there is no functional disablement, the compensation under the head of loss of amenities need not be awarded. In order to strengthen the above said contention, he relied on the judgment of the Hon'ble Supreme Court in **Raj Kumar Vs. Ajay Kumar and another** reported in **2011(1) SCC 343**. It is therefore contended by the counsel for the second respondent that the compensation awarded under the other heads are reasonable and they do not call for any interference by this Court.

7. On considering the rival submissions, it is seen that the appellant/claimant mainly contended that though the doctor/PW2 assessed the disability at 45%, the Tribunal has failed to adopt the multiplier method to determine the compensation. In the claim petition, it was stated that at the



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time of accident, the appellant/claimant was a B.Sc., Bio Technology student and aged 20 years. Due to the accident, the appellant/claimant had sustained undisplaced fracture of nasal bones, fracture of left post glenoid tubercle and scalp haematoma in right frontal region. Considering the above said factors and following the well settled principle as laid down by this Court, the Tribunal has rightly awarded disability compensation by fixing Rs.2000/- per percentage of disability especially when the year of the accident was 2008 and therefore, it does not call for any interference by this Court.

8. A perusal of records would show that the appellant/claimant had suffered partial permanent disability but there is no functional disablement. As rightly pointed out by the learned counsel for the second respondent/Insurance company, when there is no functional disablement, the compensation under the head of loss of amenities cannot be granted. It is also not the evidence of PW2/doctor that the disability of the claimant is total.



9. The learned counsel for the appellant/claimant mainly contended that the Tribunal has totally rejected the claim for medical expenses by stating that the duplicate bills were not produced. A perusal of Ex.P3 and P8 would show that the xerox copy of the medical bills were duly attested by the authorised Medical officer of the concerned hospital after giving explanation and letter to that effect. In such circumstances, this Court is inclined to award an amount of Rs.43,572/- towards medical bills (Ex.P3 and Ex.P8).

10. The compensation awarded under the heads of pain and suffering, extra nourishment and transportation is very low taking note of the nature of injuries suffered by the appellant-claimant. Therefore, this Court is inclined to award a sum of Rs.20,000/- towards pain and sufferings, Rs.5,000/- towards extra nourishment and Rs.3,000/- towards transport charges.

11. Insofar as the other heads namely, damages to cloths and articles and attender charges are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not



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call for any interference by this Court.

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12. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is enhanced from Rs.1,23,800/- to Rs.1,76,370/- in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability of 45% at Rs.2000 per percentage	90,000.00	90,000.00
Pain and Sufferings	15,000.00	20,000.00
Medical bills Ex.P3 & P8	Nil	43,572.00
Medical Expenses	4,795.00	4,795.00
Extra Nourishment	3,000.00	5,000.00
Transport to hospital	1,000.00	3,000.00
Damages to cloths and articles	1,000.00	1,000.00
Attender charges	9,000.00	9,000.00
Total	1,23,795.00 rounded off to Rs.1,23,800/-	1,76,367.00 rounded off to Rs.1,76,370/-



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13. In the result,

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(i) This appeal is partly allowed and the second Respondent/Insurance Company is directed to deposit the modified amount i.e, Rs.1,76,370/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP No.776 of 2008 within a period of six weeks from the date of receipt of a copy of this Judgment.

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

28.03.2023

Index:Yes/No

Speaking/Non-speaking order:Yes/No

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To

1. The V Judge, Small Causes Court,
(Motor Accidents Claims Tribunal),
Chennai.

2.The Section Officer

V.R.Section, High Court of Madras.

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A.A.NAKKIRAN, J.
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