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C.M.A. No.1351 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1351 of 2023

Senthil

...

Appellant

Vs.

1.K.Kannan

2.Sriram General Insurance Company Limited

E-8, EPIP RIICO Industrial Area, Sitpura

Jaipur, Rajasthan – 302 022.

...

Respondents

(R-1 remained exparte before the Tribunal
and hence notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act against the judgment and decree dated 26.04.2017 made in M.A.C.T.O.P. No.313 of 2011 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Vaniyambadi.

For Appellants : Ms.A.Subadra

For Respondents : Mr.N.Somasundar for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation awarded by the Tribunal

2. The appellant filed claim petition in M.A.C.T.O.P. No.313 of 2011 on the file of the Motor Accident Claims Tribunal and Subordinate Judge, Vaniyambadi claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 25.07.2011.

3. According to the appellant, on 25.07.2011 at about 12.00 pm while the appellant was riding in a Hero Honda Passion Plus bearing Regn.No.TN7 AD 7246 as a pillion rider slowly and cautiously on the extreme left side of the road, near Chinna Ponneri, the driver of the Mahendra Pick up van bearing Regn.No.TN23 BZ 1933 who was coming in the opposite direction from Yelagiri to Tirupattur, drove the same in a rash and negligent manner and dashed against the appellant. In the said accident, the appellant sustained



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grievous injuries. Hence, the appellant filed claim petition claiming compensation against the respondents.

4. The first respondent remained exparte before the Tribunal.

5. The second respondent filed counter statement denying the averments made in the claim petition. It is stated that the rider of the of the two wheeler only rode the motor cycle without noticing the pickup van, suddenly crossed the road and invited the accident and hence, the first respondent is not responsible for the accident; and that the second respondent is not liable to pay compensation to the appellant. The second respondent denied the nature of injuries, treatment taken and the income of the appellant and prayed for dismissal of the claim petition.

6. Before the Tribunal, the 1st appellant examined himself as PW1 and marked nine documents as Exs.P1 to P9. On the side of the second respondent neither document was marked nor witness was examined.



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7. The Tribunal, considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the van belonging to the 1st respondent and directed the second respondent to pay a sum of Rs.4,35,680/- as compensation to the appellant.

8. Aggrieved by the said order, the appellant has preferred the instant appeal seeking enhancement of compensation.

9. The learned counsel appearing for the appellant submitted that the appellant was subjected to examination by the Medical Board who had assessed the disability as 60% permanent disability and issued Ex.C1-disability certificate. The appellant had also produced Exs.P8 & P9 – photographs to prove the nature of disability suffered by the appellant. As per Ex.C1-disability certificate, the appellant had shortening of the leg and had to use the shoe raise. Considering the avocation, the Tribunal ought to have adopted multiplier method to compute the compensation under the head loss



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of future earnings. The learned counsel also submitted that although the appellant took treatment as inpatient in the hospital for more than 60 days in two spells, the amount awarded under the head attender charges is very meagre and prayed for allowing the appeal by enhancing the compensation.

10. The learned counsel appearing for the respondent, per contra submitted that apart from the disability certificate, no evidence has been adduced on the side of the appellant to prove the functional disability of the appellant. Therefore, the Tribunal was right in adopting percentage method for awarding compensation towards loss of future earning capacity. The learned counsel further submitted that the appellant has also not proved his avocation and therefore the total compensation awarded by the Tribunal is reasonable; and hence no interference is called for and prayed for dismissal of the appeal.

11. The first respondent remained exparte before the Tribunal and hence notice to the first respondent is dispensed with.



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WEB COPY 12. Heard the learned counsel appearing for the appellant as well as second respondent and perused the materials available on record.

13. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.

14. From the materials on record, it is seen that the appellant was examined by the Medical Board and the Medical Board assessed the disability as 60% permanent disability. The Medical Board has stated that the appellant suffered the following injuries -

“post traumatic ankylosis right knee & shortening and infection”

The appellant had examined himself as PW1 and stated that he was working as a dry cleaner at the time of accident. Considering the nature of injuries and the shortening of the leg, this Court is of the view that the loss of future earnings ought to have been awarded by adopting multiplier method. In view



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of the nature of job, the appellant would have suffered functional disability.

In the facts and circumstances of the case, this Court is of the view that it would be just and reasonable to fix the functional disability at 25% for the whole body. Considering the avocation, age and the year of accident, it would be just and reasonable to fix the notional income of the appellant at Rs.7000/- per month. Thus, the appellant would be entitled to Rs.3,78,000/- towards loss of future earnings, which is calculated as follows -

$$7000 \times 12 \times 18 \times 25\% = \text{Rs.3,78,000/-}$$

15. On a perusal of the records, it is seen that the appellant has taken treatment as inpatient in the hospital for more than 60 days in two spells. Hence, the amount of Rs.5,000/- awarded towards attender charges is enhanced to 15,000/- . The compensation awarded under other heads are just and reasonable and hence the same are confirmed.

16. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed



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by the claimants. Thus, the compensation awarded by the Tribunal is

enhanced from Rs.4,35,680/- to Rs.7,03,680/- break-up as follows -

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of future earnings	1,20,000/-	3,78,000/-	Enhanced
2.	Compensation for pain and sufferings	10,000/-	10,000/-	Confirmed
3.	Loss of amenities	20,000/-	20,000/-	Confirmed
4.	Partial loss of earnings	20,000/-	20,000/-	Confirmed
5.	Medical expenses	2,55,680/-	2,55,680/-	Confirmed
6.	Transport expenses	5,000/-	5,000/-	Confirmed
7.	Attender charges	5,000/-	15,000/-	Enhanced
	Total	4,35,680/-	7,03,680/-	Enhanced by Rs.2,68,000/-

17. With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,35,680/- is hereby enhanced to Rs.7,03,680/- together with interest at 6% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The 2nd respondent / Insurance company is directed to deposit the



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award amount, now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No costs.

16.08.2023

rgr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Vaniyambadi.

2. The Section Officer,
VR Section, High Court,
Madras.



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SUNDER MOHAN, J.

rgr

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