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C.M.A. No. 2628 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2628 of 2021

Ambethkar

... Appellant / Petitioner

Vs.

1. Pandurangan

2. The Divisional Manager,
M/s. United India Insurance Co. Ltd.,
A.R. Plaza, No.35,36 & 37,
45 Feet Road extension,
Balaji Nagar, Pondicherry.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 09.08.2018 made in M.C.O.P. No. 82 of 2016 on the file of the Special Officer-cum-Additional Sub Judge, Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr. T. Ananthasekar

For R1 : No Appearance

For R2 : Mr. S.M. Krishnamoorthy



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 82 of 2016, dated 09.08.2018 on the file of the Special Officer-cum-Additional Sub Judge, Motor Accident Claims Tribunal, Puducherry.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 12.11.2015, at about 01:45PM, the claimant was riding a motorcycle bearing Registration No.PY-01-AS-8494 at the junction of Pakkumudayanpet Kamaraj Salai and Ellaipillaichavady 100 feet road, opposite to Rajiv Gandhi Statue, Puducherry, a motorcycle bearing Registration No.TN-16-0983, ridden by its rider in a rash and negligent manner, dashed against the claimant's motorcycle, causing grievous injuries. A criminal case was registered in FIR.No.521/2015 under section 279, 338 of IPC on the file of SHO, Traffic Police Station (North), Pondicherry. For the injuries sustained, the claimant has filed claim petition seeking



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compensation for a sum of Rs.9,70,000/- under section 166(1)(a)(b) of the Motor Vehicles Act.

4. The first respondent, who is the owner of the motorcycle bearing Registration No.TN-16-0983 has filed a counter and stated that at the time of accident, he possess a valid driving licence and the the motorcycle was insured with the second respondent, hence the second respondent - insurance company is liable to pay any compensation.

5. The second respondent - insurance company has filed a counter and contended that the first respondent's rider has no valid driving licence at the time of accident and contended that the claimant has also contributed to the accident, who has driven the motorcycle in a negligent manner by not following the traffic rules and regulations, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.15 and Ex.X.1 - Medical Board Certificate were marked. On the side of the respondent, R.W.1 was examined and no



exhibits were marked.

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7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the rider of the first respondent's motorcycle is responsible for the accident. In point no.2, the Tribunal has quantified and awarded compensation for a sum of Rs.3,50,000/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the part of the second respondent - insurance company to indemnify the first respondent and to pay compensation to the claimant.

8. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation.

9. The learned counsel appearing for the claimant submitted that the Tribunal has not properly considered the nature of injuries sustained by the claimant and awarded a meagre compensation. He further submitted that the claimant has sustained temporal bone fracture and due to post head trauma, the claimant has lost the ability to smell, which is specifically stated in the Medical Board Report and considering the same, the Tribunal has



awarded compensation under the head comfort and amenities, which is on the lower side and the compensation awarded under other heads are also on the lower side, hence prays to enhance the compensation.

10. The learned counsel appearing for the insurance company submitted that the claimant herein is working as a Police Constable, even though, he is entitled to get leave salary, but the Tribunal has awarded compensation under the head loss of income during the treatment period. Similarly, the Tribunal has also awarded compensation under the head longevity of life, which is not permissible to the claimant, since the Tribunal has awarded compensation under the head Comfort and loss of amenities, the other heads are concerned, the Tribunal has awarded a just compensation, hence prays to dismiss the appeal.

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

12. Exs.P.7- Medicolegal examination report and Ex.P.8 - Head injury patient proforma shows that the claimant has sustained Temporal



Bone fracture and head injury and taken treatment at JIPMER Hospital, Puducherry. Further Ex.P.9 - Outpatient record issued by JIPMER Hospital shows that the claimant has taken continuous outpatient treatment for one year. Ex.X.1 - Medical Board Certificate shows that the claimant has sustained 20% disability and the claimant after post head trauma, suffer Persistent Anomsia - loss of smell. Considering the above evidences, the Tribunal has held that the disability sustained by the claimant is not classified as non functional disability, hence rightly adopted percentage method for awarding compensation. On perusal of the same, this Court is of the view that the injuries sustained by the claimant has not reduced any loss of income, hence as per the guidelines framed in the judgment of the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar*** reported in ***[2011 ACJ 1]***, the injuries sustained by the claimant are treated as non functional disability.

13. However, as per this Court judgment in ***M. Chinnathambi vs. S. Deepa and another*** reported in ***[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]***, this Court has awarded Rs.4,000/- per percentage of disability for the accident cases taken place from the year 2015, hence, considering the date of accident, this Court is inclined to modify the award



of Rs.3,000/- per percentage of disability by the Tribunal to Rs.4,000/-, hence the total compensation granted under the disability is modified to Rs.80,000/- (Rs.4,000/- x 20% of disability).

14. Considering the age, nature of injuries sustained, disability and period of treatment, the Tribunal awarded a just compensation under various heads. This Court finds no infirmity in the above compensation awarded and inclined to confirm the same.

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.	Pain and Suffering	75,000/-	75,000/-	Confirmed
2.	Permanent Disability	60,000/-	80,000/-	Enhanced
3.	Loss of income	60,000/-	60,000/-	Confirmed
4.	Transport	15,000/-	15,000/-	Confirmed
5.	Nutritious Food	15,000/-	15,000/-	Confirmed
6.	Medical Expenses	10,000/-	10,000/-	Confirmed
7.	Attendant Charges	15,000/-	15,000/-	Confirmed
8.	Comfort and Amenities	75,000/-	75,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
9.	Loss of longevity of life	25,000/-	25,000/-	Confirmed
	Total Compensation	3,50,000/-	3,70,000/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,50,000/- is hereby enhanced to **Rs.3,70,000/- [Rupees Three Lakh and Seventy Thousand 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 deposit, (excluding the 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.C.O.P.No.82 of 2016 on the file of the Special Officer-cum-Additional Sub Judge, Motor Accidents Claims Tribunal, Puducherry. 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



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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 no order as to costs in the present appeal.

13.12.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Officer-cum-Additional Sub Judge,
Motor Accident Claims Tribunal,
Puducherry.

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



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K. RAJASEKAR, J.

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