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C.M.A.No.1161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1161 of 2023

S.Muruganandam

... Appellant

vs.

1.K.Elaya Murugan

2.United India Insurance Co. Ltd.,
Silingi Building, 4th Floor,
Motor Third Party Claims Hub,
No.132, Greams Road,
Chennai – 600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and be pleased to enhance the amount awarded in M.C.O.P.No.5372 of 2015 dated 13.06.2022 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Small Causes Court), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R1 : Dispensed with

For R2 : Mr.D.Bhaskaran

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J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed to allow this appeal and be pleased to enhance the amount awarded in M.C.O.P.No.5372 of 2015 dated 13.06.2022 on the file of the Motor Accident Claims Tribunal, (Special Sub Court No.1, Small Causes Court), Chennai.

2.According to the claimant, on 16.06.2015 at about 01.00 hours while he was travelling as a pillion rider in a motor cycle, a Maruthi Swift car belonging to the first respondent insured with the second respondent driven by its driver in a rash and negligent manner dashed against the two wheeler. Due to the impact of the accident the claimant suffered grievous injuries. According to the claimant, he was working as a driver and earning a sum of Rs.20,000/- per month. Therefore the claimant filed the claim petition seeking a sum of Rs.20,00,000/- as compensation for the injuries suffered by him in the motor accident.

3.The first respondent, the owner of the Maruthi Car remained Ex-parte before the Claims Tribunal and the claim petition was contested by



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the second respondent. The second respondent/Insurance Company filed a detailed counter denying all the averments made in the claim petition, apart from disputing the negligence, liability and quantum.

4.Before the Claims Tribunal, the claimant examined himself as PW1. Ex.P1 to Ex.P11 were marked by the claimant in support of the claim. On the side of the second respondent no oral or documentary evidence was adduced. The disability certificate issued by the Medical Board was marked as Ex.C1.

5.The Claims Tribunal on an assessment of the entire evidence on record returned a finding of negligence against the driver of the car. The Claims Tribunal assessed the compensation at Rs.1,17,500/- along with 7.5% interest and mulcted the liability on the second respondent / Insurance Company. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

6.The learned counsel submitted that the Tribunal ought to have



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adopted the multiplier method instead of unit method considering that the claimant had sustained grievous injuries in the accident. He further submitted that the compensation awarded by the Claims Tribunal towards attender charges and transport expenses were very meager and hence prayed that the award may be enhanced.

7.The learned counsel for the second respondent on the other hand submitted that the award passed by the Tribunal was fair, just and reasonable and did not call for any interference.

8.I have heard both the learned counsel and have perused the materials on record.

9.It is seen from the MRI Scan report marked as Ex.P8 that the claimant suffered the following injuries:

“Compression fracture is seen in the L2 vertebral body involving its superior endplate with resultant antero-central wedging and mild retropulsion of its posterior margin indenting the thecal sac.



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Fractures in the bilateral transverse processes of L2 vertebra, right transverse processes of L1 and L3 vertebrae and bilateral lamina and spinous process of L2 vertebra

Contusions in the bilateral psoas muscles and the paraspinous muscles from L1 to L3 vertebral levels. Elongated collection, most likely hematoma is seen in the subcutaneous superficial soft tissues in the posterior spinal region extending from L1 to L4 vertebral level.

Mild annular bulges of L4-5 and L5-S1 discs indent the thecal sac.”

10.As the claimant suffered grievous injuries like fracture the Medical Board assessed the disability at 12%. Considering the nature of injuries it cannot be said that they would not impact the claimant who was a driver. Hence, the Tribunal erred in thinking that the claimant did not establish functional disability. I am therefore of the view that the functional disability can be assessed at 10%. In the light of the said discussions the multiplier method is adopted. The notional income assessed by the Tribunal at Rs.9,500/- is taken as the income of the claimant. 40% of the income is added towards future prospects. Hence the award towards Disability is



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assessed at Rs.2,55,360/- ($9500 \times 40 / 100 = 3800$; $9500 + 3800 = 13,300$;

13300 x 12 x 16 x 10/100 = 2,55,360). I find justification in the submission

of the appellant's counsel that the award towards transport charges is meager. Considering the nature of the injuries sustained by the claimant, the compensation towards transport charges is fixed at Rs.10,000/-.

Therefore, the award of the Tribunal is modified as follows:

Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Disability	Rs.48,000/-	Rs.2,55,360/-
2	Pain and Sufferings	Rs.25,000/-	Rs. 25,000/-
3	Transportation	Rs. 4,000/-	Rs. 10,000/-
4	Extra Nourishment	Rs.10,000/-	Rs. 10,000/-
5	Medical expenses	Rs.11,381/-	Rs. 11,381/-
6	Loss of earnings	Rs.19,000/-	Rs. 19,000/-
TOTAL		Rs.1,17,381 rounded off to Rs.1,17,500/-	Rs.3,30,741/-

11.In the result, the claimant shall be entitled to Rs.3,30,741/- along with 7.5% interest. It is submitted by the learned counsel for the second respondent/Insurance company that the compensation awarded by the Claims Tribunal was already deposited and the same was withdrawn by the



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appellant/claimant. It is submitted by the learned counsel for the second respondent that the appeal has been filed with a delay of 146 days and the same was condoned on condition of forfeiture of interest for the delay period. In the light of the said submission a direction is issued to the second respondent / Insurance company to deposit the balance enhanced compensation along with 7.5% interest, less the interest for the delay period of 146 days within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is directed to withdraw the same by making proper application before the Claims Tribunal.

12. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

23.06.2023

Index : yes/no

Internet : yes/no

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To

1. The Motor Accident Claims Tribunal,
(Special Sub Court No.1, Small Causes Court),

7/9



Chennai.

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



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N.MALA, J.

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