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C.M.A.No.1139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1139 of 2023

Shanmugam

... Appellant

Versus

1.Rani

2.National Insurance Company Ltd.,

Third Party Claims Office,

Regina Manson,

3rd Floor, No.46, Moor Street,

Chennai – 01.

Present Address

The Manager,

National Insurance Company Ltd.,

No.66, Murugesu Complex, 1st Floor,

Greens Road, Chennai – 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 17.09.2019 passed in M.A.C.T.O.P.No.7481 of 2015, on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Chennai.

For Appellant

: Mr.K.Ayyadurai

For R2

: Mr.J.Chandran



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JUDGMENT

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The claimant has preferred the instant appeal seeking enhancement of compensation.

2.The appellant/claimant filed the claim petition stating that on 07.06.2015 at about 02.30 p.m., while the appellant was crossing the road, the car insured with the 2nd respondent came in a rash and negligent manner, dashed against the appellant; that as a result of which, the appellant sustained grievous injuries; and thus, he was entitled for compensation.

3.The 1st respondent-owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent filed a counter stating that the accident occurred due to the negligence of the appellant; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.



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5.Before the Tribunal, the appellant examined P.W.1 and P.W.2 and marked Exs.P1 to P12 on his side. The 2nd respondent neither examined any witness not marked any document.

6.The Tribunal after considering the oral and documentary evidence held that the accident took place due to the rash and negligent act of the driver of the car insured with the 2nd respondent and directed the 2nd respondent to pay the compensation of Rs.2,24,600/- to the appellant.

7.The learned counsel for the appellant submitted that though the Tribunal fixed the disability at 20%, had awarded only a sum of Rs.3000/- per percentage of disability; that the appellant would be entitled to Rs.5,000/- per percentage of disability as per the decision of this Court in the case of ***Dr.Prafulla vs. Bajaj Allianz General Insurance Co. Ltd.***, made in ***C.M.A.No.2446 of 2021***. The learned counsel further submitted that the compensation awarded under other heads also requires enhancement and prayed for allowing of the appeal.



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8. Notice to the 1st respondent was dispensed with vide order of this

Court dated 06.06.2023.

9. The learned counsel for the 2nd respondent submitted that the award of the Tribunal is just and reasonable and no interference is called for and thus, prayed for dismissal of the appeal.

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

11. On perusal of the records, it is seen that the appellant has sustained the following injuries:-

“1) Fracture Medical Malleolus left leg 2) Left leg Metatarsal 2 & 3 Fracture, Present disabilities: a) Pain and stiffness left leg and knee joint. Movements restricted. Knee flexion 0 to 90* only. (normal 130*). Difficulty in walking/climbing steps/sitting cross legged/squatting)”

The appellant was examined by P.W.2-Doctor. However, the appellant was not examined by the Medical Board. The Doctor assessed the

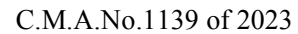


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disability at 30%. Considering the injuries suffered by the appellant, the Tribunal had fixed the disability at 20%. This Court is of the view that no interference is called for in the said finding of the Tribunal. However, this Court is of the view that the appellant would be entitled to Rs.5000/- per percentage of disability. Thus, the compensation under the head disability would be as follows:

$$\text{Rs.}5000 \times 20 = \text{Rs.}1,00,000/-.$$

12.Considering the nature of injuries, disability suffered by the appellant and the fact that the appellant was in the hospital for nearly 41 days, this Court is of the view that the compensation under the head pain and sufferings and loss of amenities can be enhanced to Rs.30,000/- each under both the heads. As regards compensation under the head loss of earning, this Court is of the view that the appellant could not have pursued his avocation for four months. The Tribunal had fixed the notional income at Rs.12,500/-, which is just and reasonable. Therefore, the award under the head loss of earning has to be enhanced to Rs.50,000/-(Rs.12,500/- X 4). The award under other heads is just and reasonable and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:-



13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.24,600/- is hereby enhanced to Rs.3,02,100/-, together with interest at a rate of 7.5% per annum (excluding the default period, if any), from



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the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the 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 entire award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. However, the appellant is not entitled to interest for a period of 1130 days, as per the order of this Court dated 24.04.2023 in C.M.P.No.6964 of 2023 in C.M.A.Sr.No.32681 of 2023. The appellant is directed to pay the necessary Court fee, if any, on the enhanced award amount. No costs.

26.09.2023

rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The Special Sub-Judge No.II,
The Motor Vehicle Accident Tribunal,
Thiruvannamalai.

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



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SUNDER MOHAN, J.

rst

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