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C.M.A.No.1586 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1586 of 2023

Kamal

... Appellant

Versus

1.Venkatesan

2.The Manager,

Reliance General Insurance Co. Ltd.,

Reliance House, No.6, 6th Floor,

Haddos Road, Nungambakkam,

Chennai – 600 006.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to set aside the judgment and decree dated 15.07.2019 passed in M.A.C.T.O.P. No.5719 of 2015, by the Motor Accident Claims Tribunal, VI Court of Small Causes, Chennai.

For Appellant

: Mr.K.Ayyadurai

For R1

: Ex-Parte

For R2

: Ms.G.Sukumari

JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.A.C.T.O.P. No. 5719 of 2015 dated 15.07.2019.



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2.The claim petition was filed stating that on 06.07.2015, at about

8.30 hrs, the appellant travelled in the auto bearing registration No.TN-18-AB-5403 as passenger along with friends from Nagooran Thottam to Ennore. When the auto was at E.E.Road, in front of Arusanth Enterprice, Thiruvottiyur Chennai from South to North direction, the auto inverted on the road due to rash and negligent driving by the driver of the auto. In the said accident, the appellant sustained grievous injuries and thus, he is entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal. The 2nd respondent/Insurance Company filed counter denying all the averments made in the claim petition and stated that the driver of the auto did not possess valid driving license at the time of accident. Hence, the 2nd respondent is not liable to pay compensation to the appellant. In any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

4.The appellant/claimant examined three witnesses and marked Ex.P.1 to Ex.P.20 on his side. On behalf of the 2nd respondent/Insurance Company, R.W.1 was examined and Ex.R1 to R3 were marked.



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5.The Tribunal after considering the oral and documentary evidence has held that the accident occurred due to rash and negligent driving of the driver of the auto and since the driver of the auto did not have driving license, the Tribunal directed the 2nd respondent/Insurance Company to pay a sum of Rs.63,000/- to the appellant/claimant at the first instance and recover the same from the 1st respondent/owner of the vehicle.

6.Aggrieved over the award passed by the Tribunal, the appellant/claimant filed the present appeal seeking for enhancement of compensation.

7.Learned counsel appearing for the appellant would submit that the compensation awarded by the Tribunal is meagre and has to be enhanced under all the heads. The Tribunal had reduced the percentage of disability assessed by P.W.3/Doctor at 20%, without any basis. He would further submit that the accident is of the year 2015 and hence, the Tribunal ought to have awarded Rs.5,000/- per percentage of disability. Further, the compensation awarded under the head of pain and suffering and extra nourishment are also meagre. The nature of injuries would



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show that the appellant/claimant could not pursue his avocation for more than two months and therefore, the Tribunal ought to have awarded compensation under the head of loss of income during the treatment period and hence, prayed for enhancement of compensation.

8.Learned counsel appearing for the 2nd respondent/Insurance company per contra would submit that the appellant/claimant did not subject himself to examination by the Medical Board. The Tribunal therefore was right in reducing the percentage of disability to 15% considering the injuries suffered by the appellant. The Tribunal considering the nature of injuries, age and avocation of the appellant, has awarded compensation under all other heads, which are just and reasonable and prayed for dismissal of the appeal.

9.The only question before this Court is whether the compensation awarded by the Tribunal is just and reasonable.

10.Admittedly, this Court finds that the appellant was not examined by the Medical Board. P.W.3/Doctor had issued Ex.P19/disability certificate assessing 20% partial permanent disability.



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The Tribunal found that since the said disability certificate was not supported with any assessment or worksheet, the certificate cannot be accepted as such. Considering the nature of injuries sustained by the appellant, viz., Lacerated injury 8x3x1 cms left knee and fracture distal fibula left, this Court is of the view that the disability assessed by the Tribunal as 15% cannot be faulted since the appellant was unable to show any evidence to hold that the disability assessment of Tribunal was wrong.

11.Further, this Court finds that the Tribunal had awarded a sum of Rs.3,000/- per percentage of disability. The accident took place in the year 2015. This Court in the case of ***Dr.Prafulla vs. Sajeelbai Balakrishnan and others***, reported in ***2022 (2) TNMAC 97 (DB)***, has fixed a sum of Rs.5,000/- per percentage of disability for the accident that took place in the year 2015. Applying the said principle, this Court is of the view that the Tribunal ought to have awarded Rs.5,000/- per percentage of disability. Hence, the appellant is entitled to Rs.5000/- per percentage of disability and therefore, the amount awarded by the Tribunal under the head of disability is enhanced from Rs.45,000/- to Rs.75,000/-. The compensation awarded by the Tribunal under the head



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of pain and suffering and extra nourishment at Rs.5,000/- each are enhanced to Rs.10,000/- each. The Tribunal has awarded Rs.2,000/- under the heads loss of amenities which is meagre and hence, the same is enhanced to Rs.10,000/-. Considering the nature of injuries suffered by the appellant, taking the notional income of the appellant at Rs.10,000/- per month, loss of income during treatment period for one month is awarded at Rs.10,000/-. The amount awarded by the Tribunal under other heads are just and reasonable. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	45,000	75,000	Enhanced
2.	Pain and Suffering	5000	10,000	Enhanced
3.	Extra Nourishment	5000	10,000	Enhanced
4.	Damages to clothes	1000	1000	Confirmed
5.	Assistant Charges	4000	4000	Confirmed
6.	Loss of Amenities	2000	10000	Enhanced
7.	Transport Charges	1000	1000	Confirmed
8.	Loss of Income during treatment period	-	10,000	Granted
	Total	63,000	1,21,000	Enhanced by Rs.58,000/-



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12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.63,000/- is hereby enhanced to Rs.1,21,000/- together with interest at 7.5% 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 award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment and thereafter, recover the same from the 1st respondent/owner of the vehicle. On such deposit the appellant/claimant is permitted to withdraw the entire 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.

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J.

rst

To:

- 1.The Motor Vehicle Accident Tribunal,
VI Court of Small Causes, Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.

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