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C.M.A. No. 1678 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

C.M.A. No. 1678 of 2021

Sakthivel

... Appellant/ Petitioner

Vs.

1. M/s. ICM Logistics,
No.W 121, Firm Towers,
3rd Floor, 3rd Avenue,
Anna Nagar, Chennai-600040.

2. The Manager,
Tata AIG General Insurance Company Limited,
Regd. Office 15th Floor,
Tower A, Peninsula Business Park,
Ganapatrao Kadam Marg,
Off. Senapati Bapat Mark,
Lower Parel, Mumbai-400013.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgement dated 12.07.2019 made in M.C.O.P. No. 67 of 2018, on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant	:	Mr. S.P. Yuaraj
For R1	:	No Appearance
For R2	:	Mr. K. Vinod



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JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 67 of 2018, dated 12.07.2019 on the file of the Special Sub Judge, Motor Accident Claims Tribunal, Krishnagiri, wherein the Tribunal has awarded compensation for a sum of Rs.2,28,175/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

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

3. The case of the claimant is that on 19.06.2015 at about 10:30 hours, he was riding a Bajaj CT Motor cycle bearing Registration No.TN-24-B-6062 on Bangalore to Hosur National Highway road, while he reached near E.S.I. Ring Road, a TATA lorry bearing Registration No.HR-55-H-9118 belongs to the first respondent, driven by its driver in a rash and negligent manner came from E.S.I. Ring Road, entered the Bangalore - Hosur Road and dashed on the motor cycle of the claimant, which resulted



causing grievous injuries to him. A criminal case was also registered against the driver of the lorry in Cr.No.193/2015 U/s.279 and 337 of I.P.C. on the file of the Hosur TIW Police Station. For the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.15,00,000/- along with interest under section 166 of the Motor Vehicles Act, 1988.

4. The first respondent to be the owner of the TATA lorry bearing Registration No.HR-55-H-9118 has not contested the claim and remained ex-parte. The second respondent is the insurer of the said lorry has filed a counter and disputed the manner in which the accident had taken place, the age, income and occupation of the claimant and also contended that the accident was happened only due to the negligence on the part of the claimant. The insurance company has also further contended that the compensation claimed under various heads are on the higher side, hence prays to dismiss the claim petition.

5. Based on the evidence placed on record, the Tribunal has accepted the case of the claimant and quantified, granted compensation for a



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sum of Rs.2,28,175/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization.

6. Aggrieved over the quantum of compensation, the claimant has filed this appeal seeking for enhancement of compensation. The respondent has not challenged the award.

7. The learned counsel appearing for the claimant submitted that the Tribunal has not properly appreciated the medical records and nature of injuries sustained by the claimant and awarded Rs.3,000/- per percentage of disability, which is not proper. He has further submitted that the compensation awarded under other heads are on the lower side, hence prays to enhance the compensation.

8. Per contra, the learned counsel appearing for the insurance company has submitted that based on the evidence placed on record, the Tribunal has awarded reasonable compensation under various heads and within the permissible norms followed by this Court, hence prays to confirm the same.



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9. Heard the submissions made on both sides and perused the materials placed on record:

10. The Tribunal in point no.3, based on the evidence of P.W.1, has listed out the injuries sustained by the claimant, which are as follows: Type 4 Radius fracture right, Right Type I Open undisplaced fracture of proximal phalanx 3rd toe and 4th toe and middle phalanx of 4th toe, Right Navicular bone fracture, Calcaneal Bone Fracture Right and Nasal Bone Fracture. The claimant was also referred to the Medical Board of Krishnagiri Government Medical College and the disability report issued by the Medical Board - Ex.C.1, shows the claimant has sustained 35% Partial permanent disability.

11. The Tribunal had held that the claimant has not shown any discomfort in standing, walking or in doing any activities. In the cross examination, the P.W.1 has stated that he is not having any Neural problems. The Tribunal has held that the disability sustained by the claimant is not functional disability and awarded compensation by following the dictum laid down by this Court judgment in *National Insurance*



Corporation vs. G. Ramesh and Another reported in ***[2013 (2) TNMAC***

583] and fixed Rs.3,000/- per percentage of disability and awarded total compensation for 35% disability as Rs.1,05,000/- (Rs.3,000/- X 35% disability). Even though, medical records discussed supra states that the claimant has sustained multiple fracture, there is no evidence placed on record to show that these injuries have restricted the earning capacity of the claimant or he was incapacitated from doing his earlier avocation of driver. The evidence placed on record also shows that the fracture noted are healed and the Tribunal has specifically recorded that, it has not forced any discomfort on the claimant. Hence, this Court accepts the finding of the Tribunal that, the claimant has not sustained any functional disability, which is likely to cause loss of earning capacity to the claimant herein. This Court is of the view that for the accident cases taken place in the year 2015, awarding compensation of Rs.3,000/- per percentage of disability is within the permissible limit, hence this Court finds no infirmity in the award of the Tribunal under the head disability and hereby confirms the same.

12. The Tribunal has awarded compensation of Rs.28,000/- towards pain and suffering and Rs.12,000/- towards extra nourishment and



attender charges, however, based on the injuries sustained by the claimant, this Court is of the view that the compensation awarded under the head pain and suffering, extra nourishment and attender charges are on the lower side, Accordingly, the award is modified to the extent that, the claimant is entitled for Rs.75,000/- towards pain and suffering and Rs.25,000/- towards extra nourishment and attender charges. Whereas the other heads such as medical expenses, transportation expenses, loss of amenities, loss of income during the treatment period and damage to articles are concerned, the Tribunal has awarded a just compensation, hence this Court is inclined to confirm the same.

13. 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.	35% Disability	1,05,000/-	1,05,000/-	Confirmed
2.	Medical expenses	23,675/-	23,675/-	Confirmed
3.	Transportation expenses	8,000/-	8,000/-	Confirmed
4.	Extra nourishment and Attender charges	12,000/-	25,000/-	Enhanced
5.	Pain and Suffering	28,000/-	75,000/-	Enhanced



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
6.	Social amenities	28,000/-	28,000/-	Confirmed
7.	Loss of income during treatment period	22,500/-	22,500/-	Confirmed
8.	Damage to articles	1,000/-	1,000/-	Confirmed
	Total Compensation	2,28,175/-	2,88,175/-	Enhanced

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,28,175/- is hereby enhanced to **Rs.2,88,175/- [Rupees Two Lakh Eighty Eight Thousand One Hundred and Seventy Five 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. 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.67 of 2018 on the file of the Special Sub Judge, Motor Accidents Claims Tribunal, Krishnagiri. On such deposit, the appellant/ claimant is permitted to withdraw the award amount now determined by this Court along with



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interest and costs, less the amount if any, already 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.

30.10.2023

stn

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation Case: Yes/No

To:

1. Special District Judge,
Motor Accident Claims Tribunal,
Dharmapuri.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K. RAJASEKAR, J.

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