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C.M.A.No.1623 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2023

CORAM:

THE HON'BLE Mr.JUSTICE A.A.NAKKIRAN

CMA. No.1623 of 2018

S. Tamil Selvan

... Appellant

..VS..

1.B. Chandiran

2.IFFCO-TOKIO General Ins.Co.Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai – 17.

.... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2011 made in MCOP.No.83 of 2009 on the file of the Motor Accident Claims Tribunal, (Fast Track Court No.1, Poonamallee)

For Appellant : Mrs.Y. Jayanthi Bhaskar
for M/s.J.Mahalingam

For Respondent : Mr.C.R.Krishnamoorthy for R2
Dispensed with for R1

J U D G M E N T

Aggrieved over the quantum of compensation arrived at by the Tribunal at Rs.1,34,234/- along with interest at the rate of 7.5% per



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annum from the date of petition till the date of deposit, the claimant / appellant is before this Court. Since challenge to the appeal is only on quantum, this Court deals only with the quantum arrived at by the Tribunal, confirming the negligence aspect.

2. It is the case of the claimant/appellant that on 22.10.2007 at 15.30 hours., while the claimant was riding his motorcycle bearing Regn.No.TN-22-AT-8150 at Poonamallee High Road, from west to east on the northern side, an auto bearing Regn.No.TN-09-AM-1401 came in a rash and negligent manner and hit against the motor cycle due to which the appellant sustained grievous injuries. Claiming that the driver of the auto has caused the accident, the second respondent is liable to pay compensation, claim petition came to be filed claiming a sum of Rs.6,00,000/- as compensation before the Tribunal.

3. The learned counsel for the appellant would submit that the Tribunal has not considered the evidence on record, judgment and



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precedents of the Hon'ble Apex Court and has awarded a meagre sum of Rs.1,34,234/- as compensation. He further submitted that the appellant has sustained grievous injuries. Despite treatment, the bones are malunited. He is unable to stretch or fold his right leg and to walk or stand for long duration and experiences difficulty even to perform his day to day activities. For the purpose of his daily chores, he needs assistance from others. He further submitted that the Tribunal ought to have awarded a sum of Rs.30,000/- under the head of 'compensation for loss of earning during the period of treatment' because there was a loss of earning for a period of 6 months from 22.10.2007 to 21.04.2008. He further submitted that Tribunal failed to award a sum of Rs.5,00,000/- towards 'compensation for future loss of earning power'. It ought to have awarded a sum of Rs.2,00,000/- towards 'compensation for continuing of permanent disability'. He further submitted that the Tribunal has awarded a sum of Rs.5000/- towards transport which is very meagre. He further submitted that the Tribunal has not awarded compensation under the head of 'medical attendance' since during the period of treatment, the



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appellants relatives had spent lot of their valuable time and money. He further submitted that Tribunal ought to have appreciate that the PW2/Doctor has assessed the disability of the appellant as 40% and issued Ex.P9/Disability Certificate, however adopted only 30% as disability. Since both the thigh bone and knee bone of the appellant were fractured and he underwent treatment as in patient from 22.10.2007 to 27.10.2007 wherein plates were fixed by surgery and screw fixation was done for the patella fracture of his right knee, he is unable to continue his job, due to his disability and hence the disability percentage has to be re-fixed . He further submitted that he was admitted again for surgery to remove the plates and screws. The appellant is still continuing his treatment as out patient even today. But it has awarded very meagre amount on the head of pain and sufferings, transportation, loss of income, loss of future amenities, medical expenses, earnings and extra nourishment. It has also failed to award on the head of future medical expenses. Hence, he prays for the enhancement of the appeal.



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4. On the contrary, the learned counsel for the respondent/Insurance Company has submitted that after considering the entire oral and documentary evidence, the Tribunal has awarded a fair and reasonable compensation. Hence, this Court need not to interfere with the award passed by the Tribunal.

5. Heard, the learned counsel for the appellant and the learned counsel for the second respondent. Perused the materials available on record.

6. The Tribunal, based on the oral and documentary evidences, has awarded a sum of Rs.1,34,234/- as total compensation payable by the second respondent to the claimant under the following heads:

Heads	Award Amount (Rs.)
Loss of income	5,000/-
Transport to Hospital	5,000/-
Extra Nourishment	5,000/-
Medical expenditure	84,234/-



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Heads	Award Amount (Rs.)
Pain and sufferings	5000/-
Loss of future amenities	30000/-
Total	Rs.1,34,234/-

7. Considering the nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix the percentage of disability at 35% since the year of the accident is 2007. However, in view of the modification, loss of future amenities for his disability is enhanced to Rs.35000/- by this Court instead of Rs.30,000/- as assessed by the Tribunal. Similarly, it would be appropriate to award Rs.15,000/-, and Rs.10,000/- , Rs.10,000/- respectively. under the heads of 'pain and sufferings', 'loss of income' and 'loss of amenities'.

8. Since Tribunal has not awarded any amount under the head of 'attender charges', this court is inclined to award Rs.3000/- towards the same.



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9. The Tribunal has awarded Rs.84,234/- towards medical expenditure and Rs.5000/- towards 'Transport to hospital', Rs.5000/- towards 'Extra Nourishment', which in the opinion of this Court, is based on evidence on record and hence the said sum awarded under these heads are confirmed as such. Thus, the break-up details of the modified compensation are as follows:

Heads	Amount (Rs.)
Loss of income	10,000
Transport to Hospital	5000
Extra Nourishment	5000
Medical Expenses	84,234
Pain and sufferings	15000
Loss of amenities	10000
Loss of future amenities	35000
Attender Charges	3,000
.....	
Total	Rs.1,67,234/-
	

10. In the result, the Civil Miscellaneous Appeal filed by the



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claimant/appellant is partly allowed by enhancing the total compensation from Rs.1,34,234/- to **Rs.1,67,234/-**, which is payable with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. It is made clear that for the enhanced amount of Rs.33,000/-, the interest rate of 7.5% shall be calculated from the date of filing of this appeal. Since the compensation amount now awarded is **Rs.1,67,234/-**, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced award amount.

11. The second respondent/Insurance Company shall deposit the enhanced compensation amount, as awarded by this Court, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the appellant/claimant through RTGS within a period of two weeks thereafter. No costs.

Index : yes/No

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Internet: Yes/No
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To

1. The Motor Accident Claims Tribunal,
(Fast Track Court No.1, Poonamallee)

2. The Section Officer,
V.R.Section,
Madras High Court,
Chennai-104.

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