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C.M.A. No.1731 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1731 of 2018

Rangasamy

... Appellant

Vs.

1.Gnanamanikandan

2. Future Generaly India Insurance Company Limited
2nd and 3rd Floor, Plot No.55 (Old No.27)
Vijayaraghava Road, T.Nagar,
Chennai - 600 017

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2017 in MCOP No.1190 of 2013 passed by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal.

For Appellant : M/s.D.Jeevitha for
Mr.Nalliyappan

For Respondents : M/s.C.Harini for
M/s.M.B.Gopalan Associates for R2
R1- Not ready



JUDGMENT

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The above Civil Miscellaneous Appeal is filed against the judgment and decree dated 05.07.2017 in MCOP No.1190 of 2013 passed by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, for enhancement of compensation.

2. The appellant is the claimant. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending car bearing Regn. No.TN-30-AJ-6718.

3. The case of the claimant is that on 06.10.2012, at about 4.30 a.m., he was travelling in a Tavera Car bearing Regn. No.TN-30-AJ-6718, on the Thanjavur to Thiruvarur main Road. At Vilamal Village opposite to a Tasmac shop, the driver of the Car, drove the same in a rash and negligent manner without observing the road traffic rules and hit against a road side tree, due to which, the claimant sustained multiple grievous injuries all over the body.

4. The claimant filed a claim petition in MCOP No.1190 of 2013 before the Motor Accident Claims Tribunal (Principal District Judge), Namakkal,



claiming compensation of Rs.10,00,000/- for the injuries sustained by the him stating that prior to the accident, the claimant was doing agriculture and earning Rs.7,500/- per month and due to the injuries, he lost is earning power and employment.

5. The said claim petition was taken by the Tribunal along with the connected matters, filed by the injured/dependents who travelled in the said car at the time of accident and affected due to the accident and common order was passed.

6. In order to substantiate the claim before the Tribunal, on the side of the claimants, the 8 witnesses were examined as P.W.1 to P.W.8 and 50 documents were marked as Ex.P.1 to Ex.P.50. On the side of the respondents, one witness was examined as R.W.1 and 2 documents were marked as Ex.R1 and Ex.R2 besides, Court documents were marked as Ex.C1 to C6 Series.

7. Before the Tribunal, the 1st respondent herein/owner of the car remained ex-parte.

8. The Tribunal, after hearing the arguments on either side and



considering the materials, awarded compensation of Rs.1,33,535/- with interest at 7.5% per annum from the date of petition till the date of realization with cost and the Insurance Company was directed to deposit the said award amount on behalf of the owner of the car.

9. Challenging the Award passed by the Tribunal, the claimant has filed the present appeal for enhancement of compensation.

10. The learned counsel for the Appellant/claimant submitted that at the time of accident, the claimant was doing agriculture and due to the accident, he sustained multiple grievous injuries all over his body including fracture on his left occipital bone, 1st, 3rd, 4th, 6th, 7th and 8th right ribs fracture and 1st, 3rd, 4th, 5th, 6th, 7th left ribs fracture. After taking treatment in the Thiruvavarur Medical College Hospital, he was shifted to Salem Polyclinic where he took treatment as inpatient for more than one month and thereafter, continued treatment in a private hospital at Salem. Though the doctor assessed the disability at 32%, the Tribunal without any reason, reduced the same to 23%. Further, the amount awarded under the other heads are also very meagre and the Tribunal failed to consider the charges towards Transportation, Loss of Amenities, Attender Charges etc., which warrants



interference.

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11. The learned counsel for the 2nd respondent/Insurance Company submitted that the Award passed by the Tribunal reflects the 'just compensation'. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

12. The accident is not in dispute. The injuries sustained by the claimant is also not in dispute. Liability is also not disputed. The contention of the learned counsel for the appellant is that though the doctor assessed the disability of the claimant at 32%, the Tribunal fixed only 23% without any reason. However, a perusal of records shows that the doctor/P.W.8 who issued the disability certificate to the claimant, has not given any treatment to the claimant and he has issued the certificate only based on the medical reports. Therefore, the Tribunal considering the fact that the claimant had not underwent any surgical treatment and he was given treatment only by way of medicine, fixed the disability at 23% and by adopting Rs.3,000/- per percentage, awarded the compensation of Rs.69,000/- towards loss of income. This Court does not find any perversity in fixing the disability of the claimant at 23%.



13. However, this Court finds that the amount awarded under the head of Pain and Sufferings and Nutrition are on the lower side. Therefore, this Court enhances the Award under the heads of "Pain and Sufferings" and "Nutrition" from Rs.5,000/- to Rs.15,000/-.

14. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	<i>Particulars</i>	<i>Amount Awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>	Award confirmed or enhanced or granted or reduced or set aside
1.	Loss of Income (Rs.3,000/-x23%)	Rs.69,000/-	Rs.69,000/-	Confirmed
2.	Medical Bills	Rs.54,535/-	Rs.54,535/-	Confirmed
3.	Pain and Sufferings	Rs.5,000/-	Rs.15,000/-	Enhanced
4.	Nutrition	Rs.5,000/-	Rs.15,000/-	Enhanced
	Total	Rs.1,33,535/-	Rs.1,53,535/-	Enhanced

15. The award of the Tribunal is modified by enhancing the compensation amount from Rs.1,33,535/- to Rs.1,53,535/- which according to this Court is a 'just compensation'.



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16. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.1,53,535/- to the credit of MCOP No.1190 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, with interest at 7.5% per annum from the date of petition till the date of realization, with cost as awarded by the Tribunal, less the amount if any already deposited, within a period of six weeks from the date of receipt of copy of this judgment.

17. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).

18. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.



19. In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal
(Principal District Judge),
Namakkal.

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



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P.VELMURUGAN. J.

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