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C.M.A.No.1028 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1028 of 2022

Ismail ... Appellant

vs.

1.Sivanathan

2.United India Insurance Company Limited,
No.22 B, P.R. Sundaram Iyer Street,
Dharmapuri – 636 701.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow this Civil Miscellaneous Appeal by enhancing the compensation awarded in the Judgment and Decree, dated 29.09.2021, passed in M.C.O.P.No.46 of 2019, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), at Palacode).

For Appellant : Mr.M.Mohamed Riyaz
For R1 : No appearance
For R2 : Mr.I.Malar

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J U D G M E N T

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This Civil Miscellaneous Appeal is filed to allow this Civil Miscellaneous Appeal by enhancing the compensation awarded in the Judgment and Decree, dated 29.09.2021, passed in M.C.O.P.No.46 of 2019, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), at Palacode).

2.The claimant has filed the above appeal for enhancement of compensation.

3.According to the learned counsel for the appellant, on 26.12.2018, when the claimant was riding his bi-cycle a motor bike belonging to the first respondent driven by its driver in a rash and negligent manner dashed against the claimant's bi-cycle, thus causing him grievous injuries.

4.According to the claimant he was aged about 57 years at the time of accident and a fruit vendor, beedi maker etc. he was earning a sum of Rs.26,000/- per month. The claimant therefore filed the claim petition



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seeking a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident. Even though the first respondent appeared through counsel he did not file a counter. The second respondent / Insurance Company filed a counter denying all the allegations and averments made in the claim petition, apart from disputing the negligence, quantum and liability.

5.Before the Claims Tribunal, the claimant examined himself as PW1 and marked Ex.P1 to Ex.P11 in support of his claim. On the side of the respondents neither any document was marked nor any witness examined.

6.The Claims Tribunal on an assessment of the evidence on record returned a finding of negligence against the driver of the first respondent. The Claims Tribunal assessed the compensation at Rs.1,63,000/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance company. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal seeking enhancement of compensation.



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7.It is submitted by the learned counsel for the appellant that it is a fit case for adopting multiplier method as the claimant sustained fracture on the right leg knee, right hand knee, fractures over right spine, right hand, right leg ankle and multiple injuries all over the body. The learned counsel submitted that the Award of the Tribunal towards disability was erroneous as it was passed in ignorance of the medical records. He further submitted that the award towards other heads were on the higher side.

8.The learned counsel appearing for the respondents on the other hand submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

9.I have heard the learned counsel for the appellant and the learned counsel for the second respondent and have perused the materials on record.

10.It is seen from Ex.P11 that the claimant suffered fracture and hence the Medical Board assessed the permanent disability at 15%. The claimant was aged 63 years and was a fruit vendor, beedi maker etc. It



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cannot be said that the injuries would not impact the claimant's earning capacity. In my view, considering the age, avocation and the nature of injuries sustained by the claimant the functional disability can be fixed at 15%. As the claimant suffered functional disability, the multiplier method is adopted. It is seen from the discharge summary that the claimant was hospitalised as inpatient from 26.12.2018 to 01.02.2019, which was about 36 days, therefore the loss towards other heads like pain and suffering, extra nourishment, attender charges, loss of amenities and transportation expenses is enhanced. The Tribunal assessed the notional income at Rs.9,000/- p.m. Taking the notional income of the claimant at Rs.9,000/- p.m., the compensation towards permanent disability is fixed at Rs.1,13,400/- (Rs.9,000/- x 12 x 7 x 15/100). The learned counsel for the respondent is justified in his submission that if the multiplier method is adopted then the claimant is not entitled for any sum towards loss of income. In view of the said discussions, the award of the Claims Tribunal is modified as follows:



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Sl. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Towards Disability	Rs.75,000/-	Rs.1,13,400/-
2	Towards Pain & Suffering	Rs.40,000/-	Rs. 50,000/-
3	Towards Extra nourishment	Rs. 5,000/-	Rs. 15,000/-
4	Towards Attender Charges	Rs.10,000/-	Rs. 25,000/-
5	Towards Loss of Amenities	Rs.10,000/-	Rs. 10,000/-
6	Towards Transportation Expenses	Rs. 5,000/-	Rs. 15,000/-
7	Toward Loss of Income	Rs.18,000/-	-
TOTAL		Rs.1,63,000/-	Rs.2,28,400/-

11.The claimants shall be entitled for a sum of Rs.2,28,400/- along with 7.5% interest. It is submitted by the learned counsel for the second respondent/Insurance company that the compensation awarded by the Tribunal along with the accrued interest with costs has already been deposited. In the light of the said submission, there shall be a direction to the second respondent/Insurance company to deposit the balance enhanced amount of Rs.65,400/- along with 7.5% interest, from the date of the claim petition till the date of realisation, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the claimant shall



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be entitled to withdraw the said amount by making proper application before the Tribunal.

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

There shall be no order as to costs.

20.06.2023

Index : yes/no

Internet : yes/no

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To

1.The Motor Accident Claims Tribunal
(Subordinate Judge), at Palacode.

2.The Section Officer,
V.R.Section,
High Court,
Madras.



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N.MALA, J.

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