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C.M.A.No.1995 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1995 of 2018

Sridharen

.. Appellant

Vs.

1.Bhagwant Kaur Bajwa
2.The oriental Insurance Company Ltd.,
D.O.V.Shankar House,
III Floor, No.1, R.M.V.Extn,
Mekhri Circle, Bangalore – 560080

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 08.04.2015 made in MCOP.No.1001 of 2006 on the file of the Motor Accident Claims Tribunal/1st Additional Subordinate Judge, Salem.

For Appellant	: M/s.S.P.Yuaraj
For Respondents	: Mr.J.Chandran for R2

J U D G M E N T

The appeal on hand is filed against the judgment and decree dated 08.04.2015 passed in MCOP.No.1001 of 2006, on the file of the Motor Accident Claims Tribunal/1st Additional Subordinate Judge, Salem.



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2. The claimant is the appellant, who filed this appeal questioning the quantum of compensation.

3. The case of the claimant is that the accident occurred on 28.06.2006 at about 8.50 a.m., when he was travelling in his father's motor cycle bearing Regn.No.TN-27-K-6094 as pillion rider with his father on the extreme left in the Seelanaikenpatty to Salem Town main road, near Sowdambika Petrol Bunk, the 1st respondent's lorry bearing Regn.No.KA-01-AA-5199 which came behind the claimant, driven by its driver in a rash and negligent manner, without giving any horn, without proper signal and without following any traffic rules, dashed against the claimant. Due to the said impact, the right and hand right leg of the claimant sustained crush injuries and fracture. Hence immediately the claimant was admitted in R.P.S.Hospital, Salem for the first aid and immediately he was taken to Ganga Hospital, Coimbatore as in-patient for better treatment. The claimant, due to the accident sustained grievous injuries and undergone

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several surgeries on his right hand since his hand lost its skin. He sustained crush injuries and fractures in the right hand leg. Thereafter, the claim petition was filed and the Tribunal adjudicated the issues with reference to the documents and evidences. The second respondent/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.2,59,120/-.

4. The learned counsel appearing on behalf of the appellant/claimant has mainly contended that the quantum of compensation granted by the Tribunal is very meagre. The compensation granted towards pain and suffering, transport to hospital and extra nourishment are also on the lower side and based on that, the appellant/claimant has chosen to file the present appeal. He further submitted that the Tribunal has erroneously adopted the percentage method instead of adopting the multiplier method. The Tribunal has failed to note that out of six injuries sustained by the appellant, three injuries are grievous fracture in his right distal end, split thickness grafting

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ram areas right upper limb and suturing or laceration right pinna and debridement. Though the Doctor has assessed the permanent disability at 58%, the Tribunal had erroneously assessed the same at 30%. It has also failed to note that the appellant was a student at the time of accident and his future is affected by this accident. The right hand of the appellant was fully affected and scars are there all over the right hand and the movement of the right hand is also affected. He further relied on the Judgment rendered in ***CMA.No.4648 of 2022 (SLP (C) No.18886 of 2019) dated 06.07.2022 in Abhimanyu Partap Singh Vs. Namita Sekhon and Others, 2022 (2) TN MAC 192 (SC)*** wherein it is held as follows:

17. On account of the injuries in temporal region and the permanent disability suffered, he was unable to do his studies as expected or planned. After sincere efforts he could have passed the LLB and started the Advocate Profession. A judicial notice can be taken of the fact that for a proficient Advocate the person must be physically fit as he is required to move frequently to attend



the Professional work reaching from one Court to other, and for movements to complete other professional commitments.

... If we accept the Future Loss of Earning ₹.5000 per month as decided by the High Court which annually comes to ₹.60,000/- and apply the Multiplier of 18 as applicable looking at the age, then the sum comes to ₹.10,80,000/- in the said head. “

Thus, the compensation awarded by the Tribunal is grossly low. Hence, he prays for enhancement of the appeal.

5. The learned counsel for the second respondent/Insurance Company has disputed the said contention by stating that considering the grievousness of the injuries, the Tribunal awarded just and reasonable compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

6. Insofar as the assessment of disability by the Tribunal is



concerned, the PW2/Doctor assessed the disability at 58% for substantial loss of muscles in the right arm, right upper limb and the consequential loss of power. But, the Tribunal has reduced the disability and totally fixed the disability at 30%, considering the nature of injuries and the evidence of PW1 and PW2 and Ex.P2/Wound Certificate, Ex.P6/Disability certificate, Ex.P4/Medical bills and Ex.P7/X-ray. Hence, the disability fixed by the Tribunal at 30% is a correct assessment.

7. Considering the nature of the injuries as well as the disability sustained, this Court is of the considered opinion there is a circumstantial degloving injury from axilla to proximal third of forearm with skin loss on anterior medial and lateral aspect to degloved skin posteriorly. There is also skin loss. The discharge summary Exp3 would go to show that there are three surgeries performed as follows:

OP-1: 28.06.2006 : Debridement right upper limb and K wire stabilisation right humerus fracture distal end.



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OP-II: 30.06.2006 : Debridement and Split thickness grafting of laceration right pinna

OP-III : 15.07.2006 : Debridement and SSG for residual Ram areas right upper limb”.

This being the factum, calculating the compensation by adopting the multiplier method would be appropriate. Thus, considering the age of the injured claimant was 13 years at the time of accident, this court fix 18 under the multiplier method to arrive at the compensation to the claimant. Accordingly, the disability compensation is enhanced to Rs.3,24,000/-($5000 \times 12 \times 18 \times 30\% = 3,24,000/-$) by this Court instead of Rs.90,000/- assessed by the Tribunal.

8. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

9. For the foregoing reasons, the compensation awarded by the



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Tribunal under the impugned award is enhanced in the following manner:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability	30% x 3000 = 90,000/-	5000x12x18x30 %=3,24,000/-
Medical Bills	1,23,119.52/-	1,23,119.52/-
Pain & suffering	25,000/-	25,000/-
Extra Nourishment	15,000/-	15,000/-
Transport to hospital	5,000/-	5,000/-
Damage to clothes	1,000/-	1,000/-
Total	2,59,119.52/-	4,93,119.52/-

Rounded off to Rs.4,93,120/-

10. In the result,

(i) This appeal is partly allowed and the Insurance Company is directed to deposit the modified award amount of **Rs.4,93,120/-** along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.1001 of 2006 within a period of four weeks from the date of receipt of a copy of this Judgment.

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(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the appellant/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs.

(iii) Since the compensation amount now awarded is **Rs.4,93,120/-**, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the enhanced award amount.

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Index : Yes/No

Speaking Order/Non-Speaking Order

gv

To

1.The Motor Accident Claims Tribunal,
/1st Additional Subordinate Judge, Salem.

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

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A.A.NAKKIRAN, J.
gv

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