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C.M.A.No.2067 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2067 of 2018

C.Paramasivam
S/o.Chinnavan

... Appellant / Petitioner

Vs.

1. N.Anbu
W/o.C.Nataraja

2. The New India Assurance Company Limited,
Motor Third Party Claims,
No.45, Moore Street,
Chennai - 600 001.

... Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.11.2017 made in M.C.O.P.No.1483 of 2012 on the file of the Motor Accidents Claims Tribunal, learned Special Sub Judge No.2 and Full Additional Charge of V Court of Small Causes, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : No appearance for R1
Ms.A.Salomi for R2



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J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.1483 of 2012, the claimant / petitioner has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The petitioner, alleged to be earning a sum of Rs.10,000/- per month, met with an accident. On 06.05.2009 when the petitioner was travelling in a motorcycle bearing Registration No.TN-22-L-3063 and as a pillion rider, his wife was travelling, at that time, a lorry bearing Registration No.Tn-28-Y-9199 driven by its driver in a rash and negligent manner, dashed against the motorcycle as a result of which, they suffered injuries and they were admitted in the hospital. Due to the loss suffered on account of the accident, they claimed compensation for the injuries suffered and also for loss of income of the petitioner, had filed the claim petitions in M.C.O.P.Nos.1482 and 1483 of 2012. The said claim was resisted by the Insurance Company / second respondent. The first respondent is the owner of the lorry and the second respondent is the Insurance Company.



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3. The appellant / petitioner has filed the claim petition in M.C.O.P.No.1483 of 2012 claiming compensation of a sum of Rs.20,00,000/- and his wife has filed the claim petition in M.C.O.P.No.1482 of 2012 claiming compensation of a sum of Rs.1,00,000/-.

4. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.3 were examined and Exs.P1 to P10 were marked. The Insurance Company did not let in any evidence either orally or documentary, but with consent, two documents have been marked as Exs.R1 and R2. The Tribunal, after analysing the oral and documentary evidence available on record, awarded a compensation of Rs.20,350/- to the claimant, i.e., wife in M.C.O.P.No.1482 of 2012 and awarded a sum of Rs.3,21,000/- to the appellant / claimant in M.C.O.P.No.1483 of 2012 and directed the second respondent / Insurance Company to pay the same to the claimants and also permitted the Insurance Company to recover the same from the first respondent under due process of law. Aggrieved over the same, the appellant / petitioner in M.C.O.P.No.1483 of 2012 has filed the present civil miscellaneous appeal.



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5. The learned counsel appearing for the appellant / claimant submitted that when the Tribunal has accepted that the lorry was driven in a rash and negligent manner and was the cause for the accident and also when the doctor, P.W.3, had clearly deposed about the injuries suffered by the claimant, the compensation awarded by the Tribunal is grossly inadequate. He further submitted that as regards the compensation awarded towards loss of disability, the Tribunal fixed the disability as 60% instead of 70% and hence, the same may be enhanced to 70%. Further, since the appellant has suffered 70% disability, he is entitled for claiming compensation towards loss of income by applying multiplier method and hence, he prays for setting aside the award.

6. The first respondent remained ex-parte before the Tribunal.

7. Per contra, the learned counsel appearing for the second respondent / Insurance Company submitted that, the Tribunal taking into consideration all the relevant documents has rightly fixed the compensation,



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which does not require any interference. He further submitted that P.W.3-doctor in his cross-examination has deposed that he has not given treatment to the petitioner and that he has assessed the disability on the basis of the medical records of the petitioner at 70%. Therefore, the Tribunal has arrived at a conclusion that some percentage of disability may differ from doctor to doctor in assessing the disability and hence, the Tribunal has fixed the disability of the claimant at 60% and further the amount of Rs.3,000/- awarded per percentage of disability is also reasonable. He further submitted that in the xerox copy of the Permit in respect of the lorry bearing Registration No.TN-28-Y-9199, marked as Ex.R2, wherein the date of expiry of permit has been mentioned as 06.02.2004 to 05.02.2009, however the date of the accident is 06.05.2009. Therefore, the second respondent has proved that the offending vehicle, i.e., lorry did not have permit at the time of the accident. In the decision, ***R.Mallika Vs. A.Babu*** reported in ***2015 (2) TN MAC 171***, this Court held that the offending vehicle did not have a valid goods carriage, permit and rightly fastened the liability on the owner of the van and directed the Insurance Company to pay the compensation, the



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Insurance Company was granted liberty to recover the same from the owner of the vehicle. Therefore, the Tribunal has arrived at a conclusion that the second respondent being the insurer is liable to pay the compensation and is permitted to recover the same from the first respondent under due process of law.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. The factum of the accident is not disputed by the parties as well as the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the claimant is with regard to the quantum of compensation awarded under the head disability.

10. It is seen from the records that, as per Ex.P9, though the claimant has suffered 70% partial permanent disability, the Tribunal has



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fixed the disability only as 60%. Though, due to passage of time, the same could have been increased to some extent now probably because of the treatments he had undergone, taking into consideration the age of the injured at the time of the accident and the disability suffered by him at that point of time, this Court, on the basis that the disability sustained at the time of accident, is inclined to fix the disability at 70% and hence, the compensation awarded under the head disability is enhanced to Rs.2,10,000/- (70% X Rs.3,000/-).

11. Considering the age, avocation and the nature of injuries sustained by the appellant, this Court finds that the compensation awarded under the other heads are just and reasonable and does not require any interference. Since the Tribunal has not awarded any compensation under the head attender charges, this Court is inclined to fix a sum of Rs.10,000/- under the said head.

12. In the above circumstances, the compensation awarded by the Tribunal under the below mentioned heads are modified as under:



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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1	Loss of Disability	Rs.1,80,000/-	Rs.2,10,000/-
2	Pain and Suffering	Rs.60,000	Rs.60,000/-
3	Loss of Income	Rs.39,000/-	Rs.39,000/-
4	Transport to Hospital	Rs.5,000/-	Rs.5,000/-
5	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
6	Damage to Clothing and Articles	Rs.1,000/-	Rs.1,000/-
7	Cost of Medicine and taking private treatment	Rs.6,000/-	Rs.6,000/-
8	Loss of Amenities of Life	Rs.10,000/-	Rs.10,000/-
9	Attender Charges	-	Rs.10,000/-
	Total	3,21,000/-	3,61,000/-

13. In the result, this civil miscellaneous appeal is allowed in part and the compensation awarded by the Tribunal at Rs.3,21,000/- is hereby enhanced to Rs.3,61,000/- together with interest @ 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 entire award



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amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.1483 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.2 and Full Additional Charge of V Court of Small Causes, Chennai and the second respondent is at liberty to recover the same from the first respondent as per the award of the Tribunal. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn fixed by the Tribunal by making proper application before the Tribunal. No costs.

06.11.2023

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Motor Accidents Claims Tribunal,
Special Sub Judge No.2 and
Full Additional Charge of V Court of Small Causes,
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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