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C.M.A.No.1147 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1147 of 2022

R.Fanaram

...Appellant

Vs.

1. Elizabeth Paul
2. TATA AIG General Insurance Co. Ltd.,
Regional Office Commander in Chief Road,
Egmore, Chennai – 105.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Decree passed in M.C.O.P.No.5744 of 2015 dated 25.11.2021 passed by the learned III Judge, Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

For Appellant : Mr.M.Muthurajan

For Respondents : R1 – Ex-parte
Mrs.C.Harini for
M/s.M.B.Gopalan Associates for R2



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JUDGMENT

This appeal is filed by the claimant challenging the Judgment and Decree passed in M.C.O.P.No.5744 of 2015 dated 25.11.2021 by the learned III Judge, Motor Accident Claims Tribunal (III Court of Small Causes), Chennai.

2 The claimant filed the claim petition seeking Rs.14.00 lakhs as compensation for the injuries sustained by him in the accident which occurred on 08.04.2015 while he was walking on the road. The first respondent is owner of the vehicle and he remained ex-parte before the Tribunal. The claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance Company filed a detailed counter denying all the allegations and averments made in the claim petition apart from disputing the negligence, quantum and liability.

3 Before the claims Tribunal, the claimant examined himself as P.W.1 and marked Exs.P1 to P8 in support of his claim. On the side of respondent, no oral or documentary evidence was adduced.



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4 The claims Tribunal, on assessment of the entire evidence on record, awarded a sum of Rs.2,16,200/- along with 7.5% interest. Not being satisfied with the compensation awarded by the claims Tribunal, the claimant has filed the above appeal seeking enhancement of compensation.

5 I have heard both the learned counsels and perused the materials available on record.

6 According to the claimant, on 08.04.2015 while he was walking on the road, the driver of the Car belonging to the first respondent and insured with the second respondent drove the vehicle in a rash and negligent manner and hit the claimant from behind, due to which he sustained grievous injuries. At the time of accident, he was aged about 55 years and was earning Rs.14,000/- p.m. as a Security Guard.

7 Learned counsel appearing for the appellant/claimant submitted that considering the age of the claimant, nature of the injuries sustained by him and the period of hospitalization undergone, the claims Tribunal ought to have



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awarded reasonable sums towards Attender Charges and pain and sufferings.

The amounts awarded by the claims Tribunal were meager under the above heads and hence the same deserved to be enhanced.

8 The learned counsel appearing for the second respondent, on the other hand submitted that the Award of the Tribunal was just, fair and reasonable and did not call for any interference by this Court.

9 The disability certificate issued to the appellant/claimant by the Regional Medical Board, Government Medical College Hospital, Chennai, was marked as Ex.C1, which shows that the claimant sustained post traumatic sequelae in left ankle due to RTA, medial Malleoli fracture, liver lacerator, kidney hematoma. The Medical Board assessed the disability at 19%. Since the appellant/claimant did not prove that due to the injuries sustained by him, he lost his earning capacity, the Tribunal adopted percentage method instead of multiplier method.

10 It is seen from the discharge summary that the appellant/claimant was hospitalized from 08.04.2015 to 18.04.2015. The tribunal has awarded only Rs.3,500/- towards Attender Charges and that too only for the period of



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hospitalization. In my view considering the age of the appellant/claimant and the period of hospitalization, the compensation towards Attender Charges needs to be enhanced because even after hospitalisation the appellant/claimant would have taken help of the attender for atleast one month. So also the compensation under Pain and Sufferings needs to be enhanced. For the aforesaid reasons and in view of the said discussion the award is modified as follows:

<i>Sl. No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Disability (19% x Rs.4000)	76,000.00	76,000.00
2.	Attender Charges	3,500.00	20,000.00
3.	Loss of Amenities	30,000.00	30,000.00
4.	Pain and Sufferings	30,000.00	50,000.00
5.	Extra Nourishment and Transportation	15,000.00	15,000.00
6.	Damages to clothes	1,000.00	1,000.00
7.	Loss of income for 5 months	60,690.00	60,690.00
TOTAL COMPENSATION		2,16,190.00	2,52,690.00

11 The claimant shall be entitled to enhanced compensation of Rs.2,52,690/- .

12 The learned counsel for the second respondent submits that the entire amount awarded by the Tribunal has already been deposited along with interest 7.5%.



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Hence there shall be a direction to the second respondent to deposit balance of the enhanced amount Rs.36,500/- along with 7.5% interest within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant/claimant shall be entitled to withdraw the same by making proper application before the Tribunal. The appeal is accordingly partly allowed. There shall be no order as to costs.

21.06.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To

1. The III Judge, Motor Accident Claims Tribunal
(III Court of Small Causes), Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.



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N.MALA.J.,

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