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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2155 of 2018

S.Hari Krishnan ... Appellant

Vs

1.Gowrisharmi Ramuduvar

2.ICICI Lombard General Insuance Co.Ltd,
No.1, Cenotaph Road,
Chennai-600 018. ... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, as against the decree and judgement dated 12.11.2014 made in M.C.O.P.No.4488 of 2011 on the file of the Motor Accident Claims Tribunal, (III Small Causes Court), Chennai.

For Appellants ... Mr.V.Mohan Chaudary

For Respondents ... Notice not ready [R1]
... Mr.R.V.Sivaraj for [R2]

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JUDGMENT

Aggrieved by impugned award passed by the Motor Accident Claims Tribunal (III Court of Small Causes), Chennai in M.C.O.P.No.No.4488 of 2021, the present appeal has been filed by the claimant/appellant seeking enhancement of compensation.

2. On 15.09.2009, when the claimant was riding the motorcycle bearing Regn No.TN-22-AS-7770 on G.S.T.Road from south to north, a Car bearing Regn No.TN-22-AZ-3499 belonging to the 1st respondent, insured with the 2nd respondent which came from the opposite direction in a rash and negligent manner, dashed against the claimant's motorcycle thereby the claimant suffered grievous injuries. Aggrieved by which, the claimant has filed a claim petition claiming compensation for the injuries sustained by him.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined Dr.Mathiazhagan as P.W.2 and marked Ex.P.1 to Ex.P.7 while R.W.1 was examined on the side of the respondents and Ex.R-1 and R-2 were

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marked. After considering all the oral and documentary evidence, the Tribunal had awarded the compensation amount of Rs.62,000/- to the claimant. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant/claimant is before this Court seeking enhancement of compensation.

4. Learned counsel appearing for the claimant submitted that when the Tribunal has accepted that the car was driven in a rash and negligent manner which was the cause for the accident and when the doctor, P.W.2, had clearly deposed about the injuries suffered by the claimant, the compensation awarded by the Tribunal is grossly inadequate. Though the doctor had quantified the disability at 35%, the compensation amount of Rs.48,000/- awarded by the Tribunal towards Pecuniary Loss by fixing the disability at 8% is on the lower side which requires enhancement. The compensation awarded under other heads is also minimal. Further, no compensation has been awarded towards Transportation and Nutrition. Hence, the compensation awarded by the Tribunal requires reconsideration and enhancement.

5. Per contra, learned counsel appearing for the 2nd respondent/insurance

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company submitted that the Tribunal after considering all the oral and documentary evidences placed in support of the claim petition and also the relevant factors, has rightly awarded the compensation amount of Rs.62,000/- which is just and reasonable and does not require any enhancement. Accordingly, he prayed for dismissal of the appeal.

6. 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.

7. The factum of the accident is not disputed by the parties and so also 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. It is claim of the appellant that when the doctor P.W.2 had assessed the disability at 35%, the compensation awarded by the Tribunal towards Pecuniary Loss by fixing the disability at 8% is on the lower side and the same requires enhancement. In this regard, the crucial evidence is that of P.W.2, the doctor, who has deposed that the claimant had suffered 35% of disability. In

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this regard, this Court had perused Ex.P.6, which is the disability certificate issued by P.W.2 and the same reveals that the doctor had assessed the functional disability of the claimant at 35%. The Tribunal, by fixing the functional disability at 25% and converting the said functional disability into whole body disability, has arrived at 8% as the whole body disability by adopting multiplier of 15, has assessed the pecuniary loss at Rs.48,000/-.A careful perusal of the injuries sustained by the claimant and considering the same with the deposition of the doctor, P.W.2, this Court feels that the whole body disability can be safely fixed at 10%. Accordingly, while fixing the whole body disability at 10%, the compensation under the head pecuniary loss is enhanced to Rs.60,000/- (Rs.40,000 x 15 x 10%).

8. Further the Tribunal has awarded a sum of Rs.9,000/- towards Loss of Income and Rs.5,000/- towards Pain and suffering and this Court finds that the compensation awarded under said heads are just and reasonable and does not require any interference.

9. In the above circumstances, the compensation awarded by the

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Tribunal under the below mentioned heads are modified as under :-

Head of Compensation	Amount awarded by Tribunal	Amount awarded by this Court
Pecuniary Loss	Rs.48,000/- (Rs.40,000/- x 15 x 8%)	**Rs.60,000/- (Rs.40,000/- x 15 x 10%) (enhanced)**
Loss of Income	Rs.9,000/-	Rs.9,000/-
Pain and suffering	Rs.5,000/-	Rs.5,000/-
TOTAL	**Rs.62,000/-**	**Rs.74,000/-**

10. Accordingly, the appeals are partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.62,000/- to Rs.74,000/-**. The second respondent-Insurance Company is directed to deposit the enhanced amount to the credit of M.C.O.P.No.4488 of 2011 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter.

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The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount. The Tribunal below shall disburse the compensation enhanced by this Court upon proof of payment of Court fee is by the appellant/claimant. There shall be no order as to costs in the present appeal.

01.11.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS

To

1.The Motor Accident Claims Tribunal Cum
(III Small Causes Court), Chennai.

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

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