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C.M.A.No.2163 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.07.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.2163 of 2018

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S.Venkatesh

.. Appellant

Vs.

1. Mr.Jayapandian

2. United India Insurance Co. Ltd.,
III Party Claim Office,
Anna Salai, Chennai-2.

3. The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Chennai-2.

.. Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and decree dated 23.11.2009 made in M.C.O.P.No.1223 of 2004 on the file of the Motor Accidents Claims Tribunal (III Judge, Small Causes Court), Chennai.

For appellant : Mr.K.Varadha Kamaraj

For respondents: R-1 (set ex-parte before the Tribunal - Notice dispensed with)

RR-2 and 3 - Notice served - No appearance

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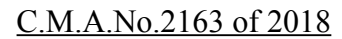
JUDGMENT

This appeal is filed by the claimant against the Award and decree, dated 23.11.2009 made in M.C.O.P.No.1223 of 2004 on the file of the Motor Accidents Claims Tribunal (III Small Causes Court), Chennai.

2. The appellant herein is the claimant/inured, who has filed the Claim Petition before the Tribunal against the respondents herein.

3. The offending vehicle is of the third respondent/Corporation. The Tribunal, after enquiry and trial, found that the appellant/claimant is entitled for compensation of Rs.1,26,000/- under various heads as tabulated hereunder:

<i>Sl. No.</i>	<i>Heads under which the amounts are awarded</i>	<i>Amount (in Rs.)</i>
1	Loss of earnings	27,000
2	Transport expenses	4,000
3	Extra-nourishment	3,000
4	Medical expenses	2,000
5	Pain and sufferings	20,000
6	Partial and permanent disability	70,000
	Total	1,26,000



4. The claimant is a vegetable merchant and when he had purchased the vegetables and travelling with vegetables in the vehicle - Auto-rickshaw bearing Registration No.TN-05-K-5128 from Koyambedu wholesale market to Broadway, and when the said auto-rickshaw was driven by its driver in a rash and negligent manner, the said Auto dashed against the vehicle belonging to the third respondent/Corporation's bus in Route No.29-K, resulting in the accident, in which the claimant suffered multiple grievous injuries. According to the claimant, he suffered - both hip fracture and surgery was done and initially, he was admitted in Kilpauk Medical College Hospital, where the injury was diagnosed as fracture - Steefe Plating Laminectomy - D12 compression (interlocking surgery was done) and in the said Hospital, he was treated as in-patient from 16.11.2003 to 13.01.2004 and thereafter, he was treated as out-patient. Due to the said accident, the claimant was totally disabled from using his hip, unable to walk as before, difficulty in sitting up and down due to the said hip surgery. Before the Tribunal, the claimant claimed compensation at Rs.5,12,000/-. The Tribunal awarded the compensation as tabulated above, against which, the



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claimant has preferred this appeal for enhancement of compensation.

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5. Learned counsel for the appellant/claimant submitted that the appellant was 28 years at the time of accident and he has sustained the spinal bone fracture, due to which, he could not go to job for 58 days and he took treatment in the Government Hospital and he suffered 40% disability as certified by Doctor.

6. It is further submitted by the learned counsel for the appellant/claimant that the Tribunal did not consider the nature of the injury and also the percentage (%) of the injury suffered by the claimant, considering the fact that the avocation of the injured/claimant is that he was a vegetable merchant/vendor and thus, the learned counsel prayed for enhancement of the compensation awarded by the Tribunal.

7. The first respondent remained ex-parte before the Tribunal. Though the names of the respondents 2 and 3 are printed in the cause list, none appeared for them.

8. Heard the learned counsel for the appellant/claimant and perused the

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materials available on record.

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9. Admittedly, the claimant was 28 years at the time of accident. He is a vegetable vendor and he had sustained injuries due to the accident. The respondents herein had not appeared and disputed the manner in which the accident had occurred, as also the liability.

10. Though the age of the appellant/claimant is not disputed, the Tribunal awarded the compensation under the head 'loss of earnings' for the period he was taking treatment and he could not attend his work for the relevant period. However, except the disablement compensation, this Court does not find any perversity in the amounts awarded by the Tribunal under other heads, and that the compensation awarded under the head "loss of earnings" does not reflect the 'just' compensation.

11. Admittedly, the treatment was taken in a Government Hospital and the claimant has not examined the Doctor who has given treatment in the said Government Hospital to prove the exact disability suffered by the claimant and also the actual sufferings of the claimant. The Tribunal, while considering the same, fixed 35% disability and awarded Rs.2,000/- per percentage of disability,

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i.e. $\text{Rs.}2,000 \times 35\% = \text{Rs.}70,000/-$, i.e. under the head "partial and permanent disability, the Tribunal awarded Rs.70,000/-.

12. During the relevant period of time, this Court, in various decisions had awarded Rs.3,000/- per percentage of disability under the head partial and permanent disability, i.e. $\text{Rs.}3,000 \times 35 = \text{Rs.}1,05,000/-$, considering the fact that the injury suffered by the claimant is grievous. Accordingly, this Court, taking into consideration the injury suffered by the claimant, as also the fact that he had undergone surgery in his hip, awards Rs.1,05,000/- under the head "partial and permanent disability".

13. As the amounts awarded under the other heads are just and reasonable, the same are hereby confirmed.

14. The modified award of the Tribunal is tabulated as below:

<i>Sl.No.</i>	<i>Heads under which the amounts are awarded</i>	<i>Amount (in Rs.) awarded by the Tribunal</i>	<i>Amount (in Rs.) awarded by this Court</i>
1	Loss of earnings	27,000	27,000
2	Transport expenses	4,000	4,000
3	Extra-nourishment	3,000	3,000
4	Medical expenses	2,000	2,000



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Sl.No.	<i>Heads under which the amounts are awarded</i>	<i>Amount (in Rs.) awarded by the Tribunal</i>	<i>Amount (in Rs.) awarded by this Court</i>
5	Pain and sufferings	20,000	20,000
6	Partial and permanent disability	70,000	1,05,000
	Total	1,26,000	1,61,000

15. Accordingly, this appeal is partly allowed. The compensation awarded by the Tribunal is enhanced from Rs.1,26,000/- to Rs.1,61,000/- (Rupees one lakh and sixty one thousand only), with interest @ 7.5% per annum from the date of filing of the claim petition till the date of payment. The third respondent/Transport Corporation is directed to deposit the above award of Rs.1,61,000/- to the credit of M.C.O.P.No.1223 of 2004 on the file of the Motor Accidents Claims Tribunal (III - Small Causes Court), Chennai, with interest as stated above and also the costs awarded by the Tribunal, within a period of six weeks from the date of receipt of a copy of this judgment.

16. On such deposit being made, the Tribunal shall give credit of the amount to the Bank Account of the injured/claimant (appellant) along with accrued interest and costs (as awarded by the Tribunal), less the amount, if any already withdrawn by the claimant.



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17. While crediting the amount of compensation now awarded with interest (plus costs awarded by the Tribunal), the Tribunal shall follow the directions issued by a Division Bench of this Court in the case of the Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others, reported in 2016 (2) LW 561.

18. The appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation amount.

19. In other respects, the impugned Award of the Tribunal is hereby confirmed.

20. There shall be no order as to costs in the present appeal.

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Index: Yes/no

Speaking Order: Yes/no

Neutral Citation : Yes/no

CS

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To

1. The Presiding Officer,
Motor Accidents Claims Tribunal,
(III Judge), Small Causes Court, Chennai.

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



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P.VELMURUGAN, J

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