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C.M.A.No.2185 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2185 of 2018

P.Murali

... Appellant

..Vs..

1.M/s.Parveen Travels Pvt. Ltd.,
Represented by its Managing Director
No.148, Perambur Barracks Road
Purasawakkam, Chennai-600 007
(1st Respondent was set exparte
before the Tribunal)

2.The New India Assurance Company Ltd.,
No.45, 2nd Lane Beach, Moore Street
Chennai-600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, as against the judgment and decree dated 05.11.2012 made in MCOP No.1128 of 2011 on the file of the Motor Accidents Claims Tribunal / XVII Additional District and Sessions Court, Chennai.



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For Appellant : Mr.S.Sathish Rajan

For Respondents : No Appearance

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 05.11.2012 passed by the Motor Accident Claims Tribunal / XVII Additional District and Sessions Court, Chennai, in MCOP No.1128 of 2011.

2. The Appellant/claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.7,02,067/- together with interest and costs to the Appellant/Claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
70% disability at Rs.2000/- per percentage	1,40,000/-
Medical Expenses	4,03,067/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Pain and Sufferings	40,000/-
Transportation	20,000/-
Nutrition	3,000/-
6 months loss of income during the treatment period	96,000/-
Total	7,02,067/-

4. The Appellant/claimant has sustained on 09.01.2011 fracture of three bones on the left leg and one fracture on the left hand and three fractures on the ribs and other injuries all over the body viz., compound grade 2 fracture shaft of femur left, Trochanteric fracture left, Proximal Tibia Fracture left, Fracture shaft of humerus left, fracture of left 5th, 9th, & 10th Ribs, as a result of an accident caused by a vehicle owned by the first respondent and insured with the second respondent. He preferred a claim before the Motor Accidents Claims Tribunal seeking compensation for the injuries sustained by him. The Motor Accident Claims Tribunal had directed the respondents to pay the Appellant/claimant, the aforesaid compensation.



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5. Before the Tribunal, the Appellant/claimant has filed thirteen documents which were marked as Ex.P1 to Ex.P13 and examined two witnesses as PW1 and PW2. On the side of the 2nd respondent/Insurance Company, neither any document was filed nor any witness examined before the Tribunal. The 1st respondent was set exparte.

6. The learned counsel for the Appellant/claimant submitted that the nature of the injuries sustained by the Appellant/claimant has not been disputed by the 2nd respondent as seen from the evidence available on record. The Appellant/claimant was hospitalized for a period of one month at Miot Hospital as seen from the exhibit P4 discharge summary. The Appellant/claimant was doing business in Hi-tech irrigation, aged 39 years at the time of the accident. He is not able to concentrate in his business after the accident. The Doctor who assessed the disability of the Appellant has fixed his disability at 80%. However, the Tribunal has reduced the same and has assessed the disability at 70%. The disability compensation awarded by the Tribunal as seen from the impugned award is Rs.1,40,000/- calculated at Rs.2,000/- per percentage of disability and the same is to be enhanced.



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Further, the compensation awarded by the Tribunal towards transportation charges, loss of income, pain and suffering and nutrition is very meagre. To strengthen his argument, the learned counsel for the appellant has relied on the judgment of this Court reported in **CDJ 2020 MHC 1013** in the case of **Chinnathambi vs S.Deepa and another**. Hence, he prays for enhancement of award.

7. Heard the counsel appearing for the appellant/claimant and also perused the materials on record. Despite notice was served to the respondents 1 and 2, none appeared for them.

8. Insofar as the assessment of disability by the Tribunal is concerned, eventhough the doctor assessed the liability at 80%, the Tribunal has reduced the disability at 70%, considering the nature of injuries and the evidence of PW2 and Ex.P12 and Ex.P13. Hence, the disability fixed by the Tribunal is correct assessment.



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9. Insofar as the assessment of disability compensation at Rs.2,000/- per percentage is concerned, the same is very low since the year of the accident is 2011. However, this Court is inclined to award disability compensation at Rs.3000/- per percentage and the disability compensation is enhanced to Rs.2,10,000/- by this Court instead of Rs.1,40,000/- assessed by the Tribunal. Insofar as the compensation awarded by the Tribunal towards Transportation during the period of treatment at Rs.20,000/- and towards nutrition at Rs.3,000/- is concerned, the same is low in the considered view of this Court. Hence, the compensation awarded under the head of Transportation is enhanced to Rs.25,000/- instead of Rs.20,000/- and towards nutrition Rs.10,000/- is enhanced instead of Rs.3,000/-.

10. 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.

11. For the forgoing reasons, the compensation awarded by the Tribunal under the impugned award is modified as follows:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
70% disability	2,000/- x 70% = 1,40,000/-	3000/- x 70% = 2,10,000/-
Medical Expenses	4,03,067/-	4,03,067/-
Pain and Sufferings	40,000/-	40,000/-
Transportation	20,000/-	25,000/-
Nutrition	3,000/-	10,000/-
6 months loss of income during the treatment period	96,000/-	96,000/-
Total	7,02,067/-	7,84,067/- rounded off to Rs.7,84,070/-

12. In the result,

(i) This appeal is partly allowed and the compensation awarded by the Tribunal is enhanced from 7,02,067/- to Rs.7,84,067/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realisation.



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(ii) The second Respondent/Insurance Company is directed to deposit the enhanced award amount i.e, Rs.7,84,070/- 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.1128 of 2011 within a period of four weeks from the date of receipt of a copy of this Judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest as per the order of this Court to the Appellant/claimant through RTGS within a period of two weeks thereafter.

(iv) The appellant/claimant is directed to pay the necessary court fee, if any for the enhanced compensation and the Registry is directed to draft the decree, after receipt of necessary court fee. No costs.

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Index:Yes/No

Internet:Yes/No

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To

- 1.The XVII Additional District and Sessions Court, Chennai.
The Motor Accidents Claims Tribunal
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.
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