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C.M.A.No.1139 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.1139 of 2003

B.Rajkumar

... Appellant

Vs.

1.Tamilselvi

2.The Chairman & Managing Director,
United India Ins. Co. Ltd.,
No.24, Whites Road,
Chennai – 600 014.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgement and decree dated 30.09.2002 made in M.C.O.P.No.3364 of 2001 on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant : Mr.J.Mahalingam

For Respondents : Ms.R.Sreevidhya [R2]



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3. Before the Tribunal, the appellant examined two witnesses viz., P.W.1 to P.W.3 and marked 20 documents viz., Ex.P.1 to Ex.A.20. No witness was examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal, allowed the petition and awarded a sum of Rs.4,42,000/- as compensation to the claimant. Aggrieved by the said award dated 30.09.2002, the present appeal has been filed by the appellant/claimant seeking enhancement.

4. The learned counsel appearing for the appellant submitted that, the compensation awarded under various heads requires to be reconsidered and a higher compensation ought to be awarded to the appellant. It is the further submission of the learned counsel that the Tribunal had not awarded any compensation towards attender charges and loss of marital life, which requires to be reconsidered. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. Per contra, the learned counsel appearing for the second respondent submitted that, taking into consideration all the relevant



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documents, the Tribunal has rightly fixed the compensation, which does not require any interference. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and also perused the materials available on record.

7. A perusal of the award passed by the Tribunal reveals that, though the Tribunal has awarded only a sum of Rs.3,92,000/- under various heads, however, the Tribunal had erred in calculating the amount as if to reflect a sum of Rs.4,42,000/- in favour of the appellant.

8. The Tribunal had awarded a sum of Rs.2,000/- towards loss of earning; Rs.10,000/- towards loss of earning due to disability; Rs.5,000/- towards disfiguration of face; Rs.10,000/- towards damages for mental, physical shock, pain and suffering; Rs.60,000/- towards permanent disability; Rs.45,000/- towards inconvenience hardship, discomfort, disappointment, frustration and mental stress in life. This Court is at a



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loss to understand as to where such heads for awarding compensation have been found by the Tribunal.

9. In order to compute the income under the head "loss of earning capacity", no document in support of proof of the income of the appellant has been filed. It is seen from the records that due to accident, the left leg of the appellant was amputated, due to which, the appellant is not able to perform his avocation which he was carrying on before the accident. This clearly shows that the appellant has suffered 100% functional disability. Applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***2011 (1) SCC 343***, this Court, while fixes a sum of Rs.3,000/- as notional monthly income and considering the fact that the appellant being aged 16 years at the time of accident, as evidenced from the records, adopting the multiplier of 18 as fixed by the Apex Court in the case of ***Sarla Verma and Ors. v. DTC & Ors.*** reported in ***(2009) 6 SCC 121***, the loss of earning capacity is arrived at Rs.3,000/- * 12 * 18 = Rs.6,48,000/-.



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10. Further, taking into account the nature of injury suffered by the claimant, this Court awards a sum of Rs,10,000/- towards attender charges and Rs.1,00,000/- towards loss of marital life.

11. Further, the amount of compensation awarded under the heads transportation, extra nourishment and medical expenses is enhanced to Rs.5,000/-, 10,000/- and 25,000/- respectively, as this court is of the considered view that the compensation awarded by the Tribunal under the aforesaid heads are very meagre and deserves enhancement. Further, the amount of compensation awarded under the head pain and suffering is reduced to a sum of Rs.25,000/-.

12. Insofar as the compensation awarded under the heads Loss of earning, loss of earning due to disability, disfiguration of face, damages for mental, physical shock, pain and suffering, permanent disability, inconvenience hardship, discomfort, disappointment, and frustration and mental stress in life, no compensation can be awarded under such heads as those heads are not conventional heads, which attract any compensation. Therefore, the compensation awarded under the said heads are accordingly set aside.



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13. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning	2,000/-	-
Loss of earning due to disability	10,000/-	-
Disfiguration of face	5,000/-	-
Damages for mental, physical shock, pain and suffering	10,000/-	-
Permanent disability	60,000/-	-
Inconvenience hardship, discomfort, disappointment, frustration and mental stress in life	45,000/-	-
Loss of earning capacity	1,50,000/-	6,48,000/-
Transportation	3,000/-	5,000/- (enhanced)
Extra nourishment	2,000/-	10,000/- (enhanced)
Medicial expenditure	5,000/-	25,000/- (enhanced)
Pain and suffering	1,00,000/-	25,000/- (reduced)
Attendar charges	-	10,000/-
Loss of marital life	-	1,00,000/-
Total	3,92,000/-	8,23,000/-

14. The appeal is allowed and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.3,92,000/-** (which has been wrongly stated in the impugned award as Rs.4,42,000/-) to **Rs.8,23,000/-**. The second respondent-Insurance Company is directed



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to deposit the said amount to the credit of M.C.O.P.No.3364 of 2001 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 appellant/claimant is permitted to withdraw the award amount along with proportionate interest and costs, less, the amount, if any, already withdrawn. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the appellant/claimant. It is made clear that the appellant is not entitled for interest from the date of dismissal for non prosecution of this appeal till the date of restoration of this appeal. There shall be no order as to costs in the present appeal.

11.10.2023
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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



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To
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- 1.The Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.,

sp

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C.M.A.No.1139 of 2003

C.M.P.No.23614 of 2023

in

C.M.A.No.1139 of 2003

M.DHANDAPANI, J.

This petition has been filed seeking to set aside the order of dismissed for default in C.M.A.No.1139 of 2003 dated 24.10.2007 and to restore the civil miscellaneous appeal.

2. Heard the learned counsel for the petitioner/appellant.

3. M/s.Sreevidhya, learned counsel for the second respondent has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is ordered and C.M.A.No.1139 of 2003 is restored to file.

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11.10.2023

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C.M.A.No.1139 of 2003

C.M.P.No.5528 of 2023

in

C.M.A.No.1139 of 2003

M.DHANDAPANI, J.

This petition has been filed seeking to condone the delay of 5554 days in filing the restore petition.

2. Heard the learned counsel for the petitioner/appellant.

3. M/s.Sreevidhya, learned counsel for the second respondent has no objection for this petition being ordered.

4. Being satisfied with the reasons stated in the affidavit filed in support of the petition, this petition is ordered and the delay of 5554 days in filing the restore petition is condoned.

11.10.2023

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(1/3)