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C.M.A.No.3577 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.3577 of 2019

Sankar

... Appellant

Vs.

1.Thirumalai

2.Divisional Manager,

Reliance General Insurance Company Limited,

Rajis Tower, 2nd Floor,

2nd Avenue, Near GRT Jewel Shop,

Anna Nagar, Chennai – 600 040.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.08.2016 made in M.A.C.T.O.P.No.42 of 2014 on the file of Special Motor Accident Claims Tribunal, Tiruvannamalai.

For Appellant : Ms.A.Subadra

For Respondents : Exparte [R1]

M/s.C.Bhuvanasundari [R2]



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JUDGMENT

The claimant is before this Court seeking an enhancement of the award passed by the Special Motor Accidents Claims Tribunal, Tiruvannamalai in M.A.C.T.O.P.No.42 of 2014, dated 17.08.2016.

2. On 10.09.2013 at about 5.00 p.m., the claimant was riding his motorcycle Regn.No.TN-32-L-2239 from Chennai – Tindivanam Road, at that time, the first respondent driven his car bearing Regn.No.TN-03-J-4176, which was insured with the second respondent, in a rash and negligent manner and dashed against the claimant. Due to the accident, the claimant sustained grievous injuries all over the body. Therefore, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2 and marked 6 documents viz., Ex.P.1 to Ex.P.6. No witnesses were examined nor any documents were marked on the side of the respondents. After considering all the oral and



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documentary evidence, the Tribunal, awarded a sum of Rs.1,21,500/- as compensation to the claimant after deducting 10% contributory negligence on the part of the claimant. Not satisfied with the same, the claimant has preferred the present appeal seeking enhancement.

4. The learned counsel appearing for the appellant submitted that, though the doctor assessed the disability of the appellant/claimant at 40% permanent disability, however, the Tribunal has not adopted multiplier method to award compensation towards loss of earning, which requires to be interfered with. She further submitted that, except the compensation towards pain and suffering, the Tribunal has not awarded compensation towards any other head in favour of the claimant, which requires to be reconsidered. Accordingly, he prays for appropriate enhancement in favour of the appellant/claimant.

5. Per contra, the learned counsel appearing for the second respondent/insurance company submitted that, by considering all the materials on record, the Tribunal had awarded compensation under the heads permanent disability and pain and sufferings, which are just and



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reasonable and the does not require any enhancement. 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. There is no quarrel with the fact that the accident had happened due to the rash and negligent driving of the first respondent. Ex.P.2/discharge summary reveals that, at the time of accident, the claimant was under the influence of alcohol. Based on Ex.P.2 and other materials on record, the Tribunal has rightly fixed 90% negligence on the part of the first respondent and 10% contributory negligence on the part of the claimant, which cannot be interfered with. Therefore, this Court confirms the finding with regard to negligence aspect rendered by the Tribunal.

8. Now, coming to the question of quantum of compensation awarded by the Tribunal, it is borne from the award passed by the



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Tribunal that, the doctor assessed that the claimant had suffered 40% permanent disability. By accepting the disability assessed by the doctor, the Tribunal had awarded a sum of Rs.1,20,000/- by erroneously fixing a sum of Rs.3,000/- per percentage of disability, even though, at the relevant point of time, per percentage of disability is Rs.4,000/-. Further, considering the fact that the percentage of disability vary from doctor to doctor, this Court is inclined to reduce the same and fixes the percentage of disability at 35%. Therefore, the amount under the head disability stands enhanced to a sum of Rs.1,40,000/- ($35 \times \text{Rs.4,000/-} = \text{Rs.1,40,000/-}$).

9. Further, taking into account the nature of injuries sustained by the claimant, this Court awards a sum of Rs.10,000/- towards attender charges. Considering the fact that, no compensation has been granted under the heads transportation and extra nourishment, this Court awards a sum of Rs.10,000/- and Rs.10,000/- respectively under these heads. Further, taking into account the fact that the claimant has taken treatment in the hospital for more than one month, this Court awards a sum of Rs.12,000/- ($6,000/- \times 2$) by fixing a sum of Rs.6,000/- per month as



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income. Further, the amount of compensation awarded under the head pain and sufferings is enhanced to Rs.50,000/-, as this Court is of the considered view that the compensation awarded by the Tribunal under the aforesaid head is very meagre and deserves enhancement.

10. In view of the above, the compensation awarded by the Tribunal is modified as under :

<i>S. No.</i>	<i>Description</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Disability (35%)	1,20,000/-	1,40,000/- (enhanced)
2	Pain and Sufferings	15,000/-	50,000/- (enhanced)
3	Extra Nourishment	-	10,000/-
4	Attender charges	-	10,000/-
5	Loss of income during the treatment period	-	12,000/-
6	Transportation	-	10,000/-
	Total	1,35,000/-	2,32,000/-

11. Deducting the amount towards the contributory negligence at 10% on the part of the appellant/claimant, the compensation payable by the second respondent/insurance company is fixed at **Rs.2,08,800/-**.



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12. Accordingly, the Civil Miscellaneous Appeal is partly allowed and the impugned award of the Tribunal is modified, enhancing the compensation amount from **Rs.1,21,500/-** to **Rs.2,08,800/-**. The second respondent/Insurance Company is directed to deposit the said amount to the credit of M.A.C.T.O.P.No.42 of 2014 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 four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant/claimant. No costs.

18.12.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.,

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To

- 1.The Special Motor Accident Claims Tribunal, Tiruvannamalai.
- 2.The Section Officer, V.R.Section, High Court, Madras.

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