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CMA.No.828 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.01.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.828 of 2018

V.Santhosh

... Appellant

Vs.

The Superintendent of Police,
Vellore, Vellore District.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 21.12.2017 made in M.C.O.P.No.993 of 2013 on the file of the Motor Accidents Claims Tribunal, Special Sub-Judge No.1, Small Causes Court, Chennai.

For Appellant : Ms.Ramya V. Rao.

For Respondents : Mr.C.Jayaprakash

Government Pleader

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 21.12.2017 in M.C.O.P.No.993 of 2013 passed by the Motor Accidents Claims Tribunal, (Special Sub-Judge No.1, Small Causes Court, Chennai.



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2. The case of the claimant/appellant is that on 16.03.2012 at 23.50 hours, while the appellant was riding a motor cycle bearing Regn.No.TN-01-AM-4393 at Luz Church Junction, Mylapore, Chennai, proceeding towards Mandaveli in North-South Direction, a Police Van bearing Regn.No.TN.23-G-0897, in a rash and negligent manner, came from East-West direction, hit the motorcycle of the appellant, due to which, the appellant fell down and sustained grievous injuries all over the body. Claiming that the appellant was a Manager and earning about Rs.21,157/- per month at the time of accident and the driver of the Van is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.12,00,000/-.

3. The appellant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award have preferred this appeal seeking enhancement.

4. The Tribunal, based on the evidences of P.W.1 and R.W.1 and perusing



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the exhibits in Exs.P1, R1 to R3, it is seen that both the appellant and the driver of the Van have given complaint with regard to the accident and the charge sheet has been filed and the complaint given by the appellant has been closed as Mistake of fact. The appellant failed to file appeal as against the closure of FIR given by the appellant which shows that he also contributed certain factors for the cause of the accident and thus Tribunal has fixed contributory negligence on the appellant and thus awarded a total compensation at Rs.2,22,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

5. The learned counsel for the respondent has submitted that the police van bearing Regn.No.TN-23-G-0897 is owned and used by the Superintendent of Police, Vellore which has been evidenced in the R.C Book and the Commissioner of Police, Egmore, Chennai is not the owner of the van and the appellant has wrongly mentioned in the cause title of the claim petition. The driver of the van is working under the control of the Deputy Commissioner of Police, Mylapore, J-4, Kottupuram Police Station(Crime) Chennai. Hence, he prays for dismissal of the appeal.



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6. The details of the compensation awarded by the Tribunal under the impugned award are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Disability	90,000/-
Loss of Earnings	30,000/-
Pain and sufferings	20,000/-
Transport Charges	10,000/-
Future Medical Expenses	50,000/-
Extra Nourishment	10,000/-
Attender Charges	2,500/-
Loss of Future Prospectus	10,000/-
Total (after deducting 40% of contributory negligence, 60% of the compensation comes to)	2,22,500/- 1,33,500/-

7. Before the Tribunal, on the side of the Appellant/claimant, two witnesses viz., PW1 and PW2 were examined and filed 13 documents which were marked as Ex.P1 to Ex.P13. On the side of the Respondent, one witness was examined as RW1 and seven documents were marked as Ex.R1 to Ex.R7.

8. Heard the learned counsel for the appellant and the learned counsel for



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the respondent and perused the materials available on record.

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9. The learned counsel appearing for the Appellant/Claimant submitted that without appreciating the evidences of PW1 and PW2, the quantum of compensation awarded by the Tribunal is not reasonable. She further submitted that the amount awarded towards disability, pain and sufferings and attender charges are also very meagre. She further submitted that the Tribunal has not awarded any compensation towards loss of amenities. She further submitted that the appellant was the Manager in a Private Company and was earning Rs.21,157/- per month. The Doctor assessed the disability of the appellant as 40% whereas the Tribunal fixed 30% for disability and awarded only a sum of Rs.3000/- per percentage. She further submitted that PW2 deposed that the injured has sustained Grade III B Open Fracture left Tibia – M1/3rd with Fracture Fibula - Neck and Lateral Malleoli and Multiple injuries all over the body. He further submitted that the Tribunal erred in awarding Rs.90,000/- under the head of disability; and in any event, the Tribunal erred in awarding compensation at Rs.2,22,500/- as against the claim of Rs.12,00,000/- he was taken treatment at Billroth Hospital, Chennai and still continuing treatment in the said Hospital. The PW2/Doctor assessed the disability at 40% as seen from Ex.P13- disability certificate. But the Tribunal



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arrived 30% as disability. Hence, he prays for enhancement of Award amount.

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10. Per contra, the learned counsel appearing for the respondent has submitted that the Tribunal after analysing the evidence on record, has rightly awarded the compensation to the appellant/claimant and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

11. Though the disability was assessed as 40%, considering the nature of injuries sustained by the appellant and based on cross-examination of PW2/Doctor and Ex.P5, Ex.P6 and Ex.P12, the Tribunal reduces the percentage as 30% and awarded Rs.90,000/- (Rs.3000x30%) towards disability. However, considering the nature of the injuries sustained by the Appellant/claimant, this Court is inclined to fix the disability of the Appellant/claimant at 40%. Hence, under the head disability, the amount to be awarded to the appellant/claimant would be Rs.1,20,000/- (Rs.3000x40%).

12. In addition to the pecuniary loss sustained by the appellant, the Tribunal



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has granted the compensation of Rs.2500/- towards Attender charges, Rs.20,000/- towards pain and sufferings. In the considered view of this Court, the said amount granted by the Tribunal is low. As per the settled practice, the compensation towards Attender charges and pain and sufferings are fixed at Rs.5000/- and Rs.30,000/- respectively by this Court. The Tribunal has erroneously failed to award any compensation towards loss of amenities and they are legally entitled to as per the settled practice. Accordingly, a sum of Rs.10,000/- is awarded as compensation to the appellant towards loss of amenities.

13. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.2,22,500/- to Rs.2,75,000/- as detailed hereunder.

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability	90,000/-	1,20,000/-
Pain and sufferings	20,000/-	30,000/-
Transport Charges	10,000/-	10,000/-
Future medical Expenses	50,000/-	50,000/-
Extra Nourishment	10,000/-	10,000 /-
Attender charges	2500	5000/-
Loss of earnings	30,000/-	30,000/-
Loss of future prospectus	10,000/-	10,000 /-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of amenities	---	10,000/-
Total	2,22,500/-	2,75,000/-

60% of Tribunal compensation = 1,33,500/-

60% of modified compensation = 1,65,000/- after deducting 40% contributory negligence on the appellant.

14. In the result,

(i) This appeal is allowed and the Respondent is directed to deposit the modified award amount i.e, **Rs.1,65,000/-** along with interest at the rate of 7.5% per annum, after deducting the amount already deposited, if any, to the credit of MCOP.No.993 of 2013 within a period of six weeks from the date of receipt of a copy of this Judgment and

(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the Appellant along with accrued interest through RTGS within a period of two weeks thereafter.



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(iii) On such deposit being made, the appellant/claimant shall withdraw the same, on making proper application before the Tribunal. Since the compensation amount now awarded is Rs.1,65,000/-, it is made clear that the claimant has to pay the appropriate Court fee in order to receive the award amount. No costs.

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Index : Yes/No
Internet : Yes/No
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To

1. The Motor Accidents Claims Tribunal
Special Sub-Judge No.1,
Small Causes Court, Chennai.

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

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A.A.NAKKIRAN, J.

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