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C.M.A.No.780 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

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THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.780 of 2023

Narasimah

... Appellant

vs.

1.K.Parimala

2.ICICI Lombard General Insurance

Company Limited,

No.140, Nungambakkam High Road,

Chennai – 600 034.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 22.01.2020 and made in M.A.C.T.O.P.No.844 of 2014 on the file of the Motor Accident Claims Tribunal, Special Judge I, Small Causes Court, Chennai.

For Appellant : M/s.S.R.Suga

For R2 : Mr.R.Sreevidya

For R1 : Ex-parte

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J U D G M E N T

The claimant has filed the above appeal against the Judgment and Decree dated 22.01.2020 and made in M.A.C.T.O.P.No.844 of 2014 on the file of the Motor Accident Claims Tribunal, Special Judge I, Small Causes Court, Chennai.

2.The appeal is filed by the claimant for enhancement of compensation.

3.The gist of the case leading to the appeal are as follows:

On 29.01.2014 at about 10.45 hours, when the claimant was riding his motorcycle from South to North direction in Kamarajar Salai, the first respondent's car driven by its driver in a rash and negligent manner hit the claimant's motorcycle thus causing him grievous injuries. The claimant therefore filed the claim petition seeking Rs.13 lakhs as compensation for



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the injuries sustained by him in the accident.

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4.The first respondent was set exparte before the Tribunal.

5.The second respondent contested the claim petition by filing a counter and denied all the allegations made in the claim petition, including, negligence, quantum and liability.

6.Before the Claims Tribunal, the claimant examined two witnesses and marked Ex.P1 to Ex.P20 in support of his claim. On the side of the second respondent one witness was examined and one document was marked. Ex.C1 was marked as Court document.

7.The Claims Tribunal on an assessment of the evidence on record returned a finding of negligence against the driver of the first respondent. The claims Tribunal awarded a sum of Rs.5,43,800/- as compensation to the claimant and mulcted the liability on the second respondent/Insurance company. Not satisfied with the compensation awarded by the Tribunal the



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claimant has filed the above appeal.

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8.The learned counsel for the appellant submitted that the award of the Tribunal was very meagre and disproportionate to the nature of injuries sustained by the claimant. The learned counsel submitted that the Tribunal ought to have adopted the multiplier method for assessing the compensation. The learned counsel further submitted that considering the nature of the injuries suffered by the claimant and the period of hospitalization undergone by the claimant, the Tribunal ought to have awarded reasonable compensation under the heads of loss of earning, attender charges, extra nourishment and pain and suffering. He further submitted that the Tribunal erred in fixing the income of the claimant at Rs.20,000/-, even though the salary certificate was filed as Ex.P12. The learned counsel therefore submitted that the award towards loss of earning was erroneous.

9.The learned counsel for the second respondent on the other hand



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submitted that the Tribunal rightly assessed the income and disability and awarded a fair and reasonable compensation and therefore, there were no merits in the appeal.

10.I have heard both the learned counsels and perused the materials placed before me.

11.The appellant sustained injuries like fracture of left proximal tibia (Schatzter Type VI) and Haematoma with compartment syndrome left leg and multiple injuries all over the body and the Doctor certified that the injuries were grievous in nature. The Medical Board issued the disability certificate i.e. Ex.C1 assessing the disability at 6%. In my view, considering the nature of the injuries sustained by the appellant and the disability assessed by the Medical Board, the assessment of compensation by applying the unit method is justified. The Tribunal has adopted the unit method and for % of disability awarded was Rs.3,000/- as the accident took place in the year 2013. In my view there is no infirmity in the award passed by the Tribunal towards disability and I therefore reject the contention of the



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learned counsel for the appellant.

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12.The learned counsel for the appellant submitted that the petitioner was terminated from service vide the document Ex.P19 and so the Tribunal ought to have adopted the multiplier method. In my view, the contention of the appellant cannot be countenanced, as in the relieving order dated 31.03.2014, there was no mention that the appellant was removed or terminated from service as unfit for employment. In my view the nature of the injuries sustained by the appellant would not result in permanent loss of employment.

13.It is submitted by the learned counsel that the award toward loss of earning at Rs.40,000/- was very meager. The learned counsel submitted that considering that the claimant was treated as inpatient for more than one month, the Tribunal ought to have assessed the loss of income for six months.

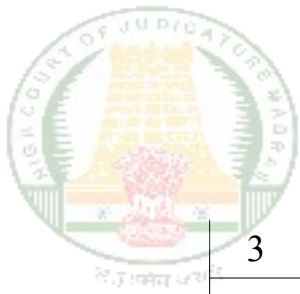
14.As the claimant was hospitalised for 28 days the contention of the



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learned counsel for the appellant that the award towards loss of income is meagre is accepted. The appellant shall be entitled to loss of income for a period of six months. The salary certificate is marked as Ex.P12 and the salary is stated as Rs.39,353/-. In my view, the reasoning of the Tribunal for rejecting the salary certificate is unsustainable. Once the salary certificate was filed and the employer was examined, in the absence of contra evidence, the Tribunal ought to have adopted the income stipulated therein. I am therefore of the view that the award towards loss of earning is erroneous. Eventhough the appellant produced the bills towards transport expenses, for a sum of Rs.14,644/-, the Tribunal awarded only Rs.9,596/-. In my view, the appellant is entitled to Rs.14,644/- towards transport expenses. Considering the period of treatment i.e. from 29.01.2014 to 25.02.2014, I hold that the claimant is entitled to Rs.20,000/- towards extra nourishment and Rs.11,000/- towards attender charges. Therefore the award of the Tribunal is modified as follows:

SI. No.	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Disability	Rs.18,000/-	Rs.18,000/-
2	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-



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3	Transportation	Rs. 9,596/-	Rs.14,644/-
4	Medical Expenses	Rs.4,09,203/-	Rs.4,09,203/-
5	Extra Nourishment	Rs.15,000/-	Rs.20,000/-
6	Attender charges	Rs. 7,000/-	Rs.11,000/-
7	Loss of earnings	Rs.40,000/-	Rs.2,30,100/-
8	Loss of future prospectus	Rs.20,000/-	Rs.20,000/-
Total Compensation is fixed at		Rs.5,43,799/-	Rs.7,47,947/-
Rounded off to		Rs.5,43,800/-	Rs.7,47,950/-

15.The claimant shall be entitled for a sum of Rs.7,47,950/- along with interest at the rate of 7.5%, from the date of the claim petition till the date of realisation. The Insurance Company is directed to deposit the entire compensation amount, within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the claimant shall be entitled to withdraw the said amount by making proper application before the Tribunal.

16.In the result, the Civil Miscellaneous Appeal is partly allowed.
There shall be no order as to costs.



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Index : yes/no

Internet : yes/no
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To

1.The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

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

N.MALA, J.

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