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C.M.A.No.1544 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1544 of 2022

Murugesan

... Appellant

Versus

1.Viji

2. Muthukovan

3.The Reliance General Insurance Co. Ltd,
No.6, 6th Floor, Reliance House,
Haddows Road, Sasthri Bhavan Opp,
Nungambakkam,
Chennai-34.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 28.02.2022 passed in M.C.O.P. No.3788 of 2016, on the file of the Motor Accident Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant
For R3

: Mr.R.Navaneetha Krishnan
: Ms.G.Sukumari



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JUDGMENT

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.3788 of 2016, dated 28.02.2022.

2.The claim petition was filed stating that on 18.10.2015, at about 20.30 hrs, the appellant was walking from North to South direction at SP Road, Mathya Kilash Bus Stop Back side, Chennai; that at the time, the car bearing Reg.No.TN-05-AS-0178 came from East to West direction in a rash and negligent manner and dashed against the appellant and thereby the appellant sustained grievous injury; that thus, the appellant was entitled for compensation.

3.The respondents 1 and 2 were remained *ex-parte* before the Tribunal.

4.The 3rd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the accident occurred due to the negligent act of the appellant, who had failed to



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exercise caution while crossing the road; that hence, the 3rd respondent was not liable to pay any compensation to the appellant; that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.12 on his side. On behalf of the 3rd respondent, one witness was examined and Ex.R1 to Ex.R4 were marked. The disability certificate issued to the appellant by the Regional Medical Board Govt. Hospital, Chennai, was marked as Ex.C1.

6.The Tribunal after considering the oral and documentary evidence had held that the accident occurred due to the rash and negligent driving by the driver of the car and being the insurer of the offending vehicle, directed the 3rd respondent to pay a sum of Rs.2,51,200/- as compensation to the appellant, at the first instance with liberty to recover the same from the respondents 1 and 2.

7.Aggrieved over the award passed by the Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.



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8.The learned counsel for the appellant submitted that the appellant suffered functional disability as could be inferred from the discharge summary and disability certificate which was issued by the Medical Board. However, the Tribunal had erroneously granted compensation by adopting percentage method; that the notional income fixed by the Tribunal at Rs.8,000/- for the accident which took place in the year 2015 is meagre; that the appellant had taken treatment as inpatient for 104 days in the hospital and therefore, the award under other heads were also meagre, and hence, prayed for enhancement of compensation.

9.The learned counsel for the appellant further submitted that the respondents 1 and 2 remained *ex-parte* before the Tribunal and therefore, prayed to dispense with notice to the respondents 1 and 2 and had also made an endorsement to that effect. Hence, notice to the respondents 1 and 2 is dispensed with.

10.The learned counsel for the 3rd respondent submitted that the award of the Tribunal is just and reasonable and does not call for any



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inference and prayed for dismissal of the appeal.

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11.The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12.On perusal of the records, it is seen that the admitted facts are that the appellant suffered both bone fractures on the left leg and he had taken treatment as inpatient for nearly 104 days. The Medical Board had assessed the disability as 25% partial permanent disability on examination. Though the appellant had stated that he was working as a mason, no proof has been produced to prove his income or avocation. Considering the nature of the injuries and the disability certificate issued by the Medical Board, this Court is of the view that the appellant had suffered functional disability and hence, it would be just and reasonable to fix functional disability at 10%. The Tribunal had fixed Rs.8,000/- as notional income, which is meagre. In the facts and circumstances, it would be just and reasonable to fix the notional income at Rs.12,000/- per month. The appellant was 49 years at the time of accident and the multiplier applicable is 13. Hence, the award of compensation under the



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head disability by adopting multiplier method would be as follows:

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$$\text{Rs.12,000} \times 12 \times 13 \times 10/100 = \text{Rs.1,87,200/-}.$$

The Tribunal considering the facts and circumstances held that the appellant could not have pursued his avocation for six months. There is no infirmity in said finding. Further, since the notional income is fixed as Rs.12,000/-pm, the compensation under the head of loss of income for six months is enhanced to Rs.72,000/-. The appellant has taken treatment as inpatient in the hospital for 104 days and hence, this Court is of the view that the attender charges awarded by the Tribunal is meagre and the same is enhanced to 50,000/-. Similarly, the award under the head loss of amenities and pain and sufferings is also enhanced to Rs.50,000/- each. The amounts awarded by the Tribunal under other heads is just and reasonable and hence the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,00,000	1,87,200	Enhanced
2.	Attender Charges	26,000	50,000	Enhanced
3.	Loss of Amenities	30,000	50,000	Enhanced
4.	Pain and Sufferings	30,000	50,000	Enhanced
5.	Extra Nourishment and Transportation	15,000	15,000	Confirmed
6.	Damages to Clothes	1,000	1,000	Confirmed
7.	Loss of Income for 6 months	48,000	72,000	Enhanced
8.	Medical Bills	1,182	1,182	Confirmed
	Total	2,51,182 rounded off to 2,51,200	4,26,382 rounded off to 4,26,400	Enhanced by Rs.1,75,200/-

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,51,200/- is hereby enhanced to Rs.4,26,400/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of



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petition till the date of deposit. The 3rd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment, at the first instance and recover the same from the respondents 1 and 2. On such deposit, the appellant/claimant is permitted to withdraw the entire award amount along with interest and costs, less the amount already deposited, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

23.08.2023

rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

1.The III Court of Small Causes,
The Motor Vehicle Accident Tribunal,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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