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C.M.A.No. 1481 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 1481 of 2022

Sivakumar

... Appellant

Versus

1.S. Karthikeyan

2.The Divisional Manager

The United India Insurance Company Limited

TP Claims Hub, No.81, Katpadi Road

TKM Complex

2nd Floor, Vellore – 632 004.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 09.01.2020 made in M.A.C.T.O.P.No. 398 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court, Tiruvannamalai.

For Appellant	:	Mr.A.G.F. Terry Chella Raja
For R1	:	Exparte before the Tribunal
For R2	:	Mr.M. Krishnamurthy



C.M.A.No. 1481 of 2022

WEB COPY

JUDGMENT

The above appeal is filed by the claimant seeking enhancement of compensation.

2. According to the claimant, on 10.11.2017, while the claimant was travelling in a Tata car along with others due to the rash and negligent driving of the driver, the car dashed against a tamarind tree. Due to the impact, the claimant sustained grievous injuries. Therefore, the claimant filed the claim petition claiming a sum of Rs.7,00,000/- as compensation for the injuries sustained by him.

3. Before the Claims Tribunal, the first respondent remained ex-parte and the claim petition was contested by the second respondent/Insurance Company. The second respondent/Insurance Company filed a detailed counter affidavit denying all the allegations made in the claim petition apart from disputing the negligence, liability and quantum of compensation.



C.M.A.No. 1481 of 2022

4. Before the Claims Tribunal, the claimant examined himself as PW1 and Ex.P1 to Ex.P10 were marked in support of the claim. On the side of the 2nd respondent/Insurance Company, no oral or documentary evidence was adduced. Ex.C1 disability certificate issued by the Medical Board was marked as court document.

5. The Claims Tribunal, on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the first respondent. The Tribunal awarded a sum of Rs.2,78,957/- as compensation along with 7.5% interest. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

6. The learned counsel for the appellant submitted that the award of the Tribunal towards “permanent disability” was unsustainable. The learned counsel further submitted that the award under other heads was meagre and the same deserved to be enhanced.



C.M.A.No. 1481 of 2022

WEB COPY

7. The learned counsel for the appellant further submitted that the Claims Tribunal having adopted the unit method erred in awarding Rs.3,000/- per percentage of disability instead of Rs.5,000/- per percentage of “permanent disability”. The learned counsel relied on Chinnathambi's case in support of his contention. The learned counsel submitted that the claimant was hospitalized for 6 days for medical treatment and therefore the Tribunal ought to have awarded reasonable sum towards attender charges.

8. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that the compensation awarded by the Claims Tribunal was just, fair and reasonable and did not call for any interference in the appeal.

9. I have heard both the learned counsels and perused the materials available on record.

10. I find justification in the submission of the learned counsel for the appellant that the Claims Tribunal ought to have fixed Rs.5,000/- per



C.M.A.No. 1481 of 2022

WEB COPY

percentage of disability. Following the judgment of this Court in ***Chinnathambi case*** reported in **2020 (1) TNMAC 617**, I find that the claimant is entitled to Rs.5,000/- per percentage of disability, as the accident took place in the year 2015. Therefore, the award of the Tribunal towards “permanent disability” is enhanced to Rs.1,50,000/-.

11. It is submitted by the learned counsel for the appellant that the claimant suffered fracture of left medial epicondyle of humur with internal fixator and articular comminution present, medial pillar disrupted, trochlea comally split into 2 fragment, lateral pillar intact and trochlea fracture off from capitellum. The claimant was hospitalized for six days for treatment of the aforesaid injuries. I am therefore of the view that the award of the Tribunal towards “attender charges” needs to be enhanced.

12. In view of the above discussions, the award of the Tribunal is modified as follows:-



C.M.A.No. 1481 of 2022

S.No.	Various Heads	Award of the Tribunal	Award of this Court
1.	Permanent Disability	Rs.90,000	Rs.1,50,000
2.	Pain and Suffering	Rs.30,000	Rs.30,000
3.	Loss of Amenities	Rs.20,000	Rs.20,000
4.	Nutrition and Damage to Articles	Rs.15,000	Rs.15,000
5.	Attendar Charges	Rs.5,000	Rs.15,000
6.	Transport Expenses	Rs.3,000	Rs.3,000
7.	Loss of income	Rs.14,000	Rs.14,000
8.	Medical Expenses	Rs.1,01,957	Rs.1,01,957
Total		Rs.2,78,957	Rs.3,58,957

13. The claimant is entitled to enhanced compensation amount of Rs.3,58,957/- along with 7.5% interest from the date of the claim petition till the date of deposit.

14. In view of the above discussion, there shall be a direction to the second respondent/Insurance Company to deposit the enhanced compensation amount after deducting the amount, if any, already deposited with interest as stated above within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is entitled to withdraw the same by making appropriate application before the Tribunal.



C.M.A.No. 1481 of 2022

WEB COPY

15. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

12.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

MSM

To

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



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C.M.A.No. 1481 of 2022

N.MALA.J.,

msm

C.M.A.No. 1481 of 2022

12.06.2023