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CMA No. 1322 / 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1322 of 2023

R.Sudharshan

... Appellant

Versus

1. P. Karthick

2. National Insurance Co.Ltd.,
Sowcardpet Branch,
Chennai – 600 079.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 59 of 1988 seeking to enhance the award dated 06.08.2022 made in M.C.O.P. No. 2360 of 2011 on the file of Motor Accident Claims Tribunal, VI Small Causes Court, Chennai.

For Appellant : Mr. V. Balamurugan.

For Respondents : Mr. J. Chandran for R2.

J U D G M E N T

The appeal has been filed by the petitioner challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 2630 of 2011 dated 06.08.2022.



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2.The appellant had filed a claim petition stating that on the date of accident i.e., on 12.02.2011 at about 10.50 p.m., while he was travelling in an auto bearing Registration No.TN 04 U 4658 along with his friends, the auto driver drove the auto in a rash and negligent manner as a result of which the auto capsized and the appellant suffered injuries and Cr.No. 111 of 2011 was registered for the offence under Sections 279 and 337 of the Indian Penal Code on the file of C5 Vengal Police Station, Thiruvallur.

3.The second respondent filed a counter denying the averments in the petition and submitted that the accident had not taken place due to the negligence of the first respondent who is the owner of the vehicle.

4.The first respondent remained ex-parte before the tribunal.

5.The appellant examined himself as PW1 and doctor as PW2 and marked Ex.P.1 to Ex.P.9 including the disability certificate issued by the doctor as Ex.P.7. The disability certificate issued by the medical board was marked as Ex.C.1.



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6.The Tribunal after considering the evidence and documents filed on the side of the appellant awarded a compensation of Rs.1,29,500/- to the appellant. Aggrieved by the said order, the appellant has preferred the instant appeal.

7.This case was taken up for final hearing at the stage of admission with the consent of the learned counsel for the appellant and the second respondent. Since the learned counsel for the first respondent remained exparte before the tribunal, notice to him is dispensed with.

8.The learned counsel for the appellant submitted that the tribunal ought to have accepted Ex.P.7 and fixed the disability at 45%. The learned counsel for the appellant further submitted that the Tribunal ought to have calculated loss of income for a period of five months and ought to have awarded $\text{Rs.6500/-} \times 5 = \text{Rs.32,500/-}$ under the head loss of income. The learned counsel also submitted that the Tribunal awarded a meagre sum of Rs.15,000/- under the head 'pain and sufferings'.



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9. However, the learned counsel for the second respondent submitted that enhancement claimed by the learned counsel for the appellant is without any substance. The learned counsel therefore, submitted that the tribunal had correctly considered the evidence on record and awarded a just compensation of Rs.1,29,500/- and prayed for dismissal of the appeal.

10. This Court finds that the Disability Certificate viz., Ex.P.7 would show that the appellant suffered 45% permanent disability. Hence, this Court is inclined to accept the said report as the second respondent has not let in any evidence to the contrary. Further, it is seen that the Medical Board has examined the appellant nearly seven years after the occurrence i.e. in the year 2022. Hence, that cannot be the basis for determining the permanent disability at 20% by the Tribunal. The Tribunal had fixed Rs.4000/- per percentage of the disability. This Court finds no infirmity in the said finding. Hence, the appellant is entitled to a compensation of Rs.1,80,000/- (Rs.4,000/- X 45%) under the head permanent disability and loss of future income; Further, the compensation under the head loss of income which has been calculated by the Tribunal for three months is enhanced to a period of five months



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considering the nature of injury suffered by the appellant. Hence, the claimant is entitled to Rs.6,500/-X5 = Rs.32,500/-. This court also finds that compensation awarded under the head pain and sufferings may be enhanced from Rs.15,000/-toRs.30,000/-. The award of the Tribunal under the other heads remains unaltered. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Transport expenses	5,000/-	5,000/-	Confirmed
2.	Extra nourishment	5,000/-	5,000/-	Confirmed
3.	Attendant charges	5,000/-	5,000/-	Confirmed
4.	Permanent disability and loss of future income	80,000/-	1,80,000/-	Enhanced
5.	Loss of income	19,500/-	32,500/-	Enhanced
6.	Pain and sufferings	15,000/-	30,000/-	Enhanced
	Total	Rs.1,29,500/-	Rs.2,57,500/-	Enhanced by Rs.1,28,000/-

11. With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at



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Rs.1,29,500/- is hereby enhanced to Rs.2,57,500/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.

03.07.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai.



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SUNDER MOHAN, J

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