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C.M.A.No.1284 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

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Rishi @ Rishikesavan

... Appellant

Vs.

1.J.H.Kumar

2.The United India Insurance Company Limited,
Represented by its Branch Manager,
Cuddalore.

3.N.Subramaniyan

4.The United India Insurance Company Limited,
Represented by its Branch Manager,
B.O.II, Oriental Complex,
No.77, Arunachala Asari Street,
Salem – 1.

5.S.Lakshmi

6.National Insurance Company Limited,
Represented by its Regional Manager,
Divisional No.IV,
169, Annasalai, Chennai-2.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 01.10.2021 in M.C.O.P.No.493/2009 on the file of the Motor Accidents Claims Tribunal (Additional Special Judge) Krishnagiri.

For Appellant

: Mr.R.Nalliyappan



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For Respondents : R1 & R5 – Dispense with
R3 - Died
Mr.C.Paranthaman for R2 & R4
Mr.S.Arunkumar for R6

J U D G M E N T

The claimant/appellant has preferred this appeal seeking enhancement of compensation.

2.The claimant/appellant filed a claim petition before the Tribunal stating that on 01.04.2002, while he was travelling in a car, the lorry belonging to the first respondent and insured with the second respondent hit the car in which the appellant travelled and as a result of which, the car turned to the left and another lorry driven by the third respondent herein had hit the car as a result of the which, the appellant sustained grievous injuries.

3.The respondents 1, 3 and 5 remained exparte before the Tribunal.

4.The respondents 2 and 4 filed a counter stating that the accident took place only due to the negligence of the appellant and hence they are not liable to pay the compensation. The sixth respondent/ insurer of the car owned by the appellant stating that the accident took place only due to the



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negligence of the two lorry drivers insured with the second and fourth respondents herein.

5.The Tribunal after taking into consideration oral and documentary evidence held that the accident took place only due to the negligence of both the lorry drivers and fixed 50% contributory negligence on both of them and directed the second and fourth respondents to pay a compensation of Rs.4,11,920/- jointly.

6.Learned counsel for the appellant submitted that the award of the Tribunal is meagre considering the nature of injuries suffered by the appellant; that the appellant is an actor and due to facial injuries, he had suffered loss of income and therefore prayed for enhancement of compensation.

7.The learned counsel for the second and fourth respondent per contra submitted that the appellant had neither proved the avocation nor income and hence, the Tribunal was right in awarding compensation in a percentage method and Rs.3,000/- for computing the compensation under



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the head loss of income.

8.Learned counsel for the sixth respondent submitted that the award of the Tribunal is just and reasonable.

9.Heard the learned counsel appearing for the appellant, the learned counsel for the respondents 2 and 4 and the learned counsel for the sixth respondent and perused the materials available on record.

10.The only question involved in this appeal is whether the quantum of compensation awarded by the Tribunal is just and reasonable.

11.On perusal of records, it is seen that the appellant examined himself as P.W.1 and deposed before the Tribunal that he was an actor and was earning Rs.1,00,000/- per month. However, no documentary proof was filed before the Tribunal to establish the income.

12.The appellant had suffered the following injuries:

(i).Left front temporo subdural haematoma and subarachnoid



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haemorrhage

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(ii).Fracture Ribs 5, 6, 7, 8 Right side

(iii).Fracture right pubic rami

13.Considering the injuries sustained by the appellant, this Court is of the view that the compensation under the head loss of amenities could be enhanced to Rs.50,000/-. The Tribunal had awarded a compensation under the head pain and suffering at Rs.50,000/- which is just and reasonable. The award under the head transport expenses can be enhanced to Rs.15,000/-. The award of the Tribunal by adopting percentage method cannot be faulted since the appellant has not established any functional disability due to the accident.

14.Considering the injuries, the Tribunal found that the appellant could not have pursued his avocation for a period of six months. However, the Tribunal fixed the notional income as Rs.3,000/-. Since the accident is of the year 2002 and considering the fact that the appellant is an actor, this Court is of the view that the notional income can be fixed at Rs.5,000/- per month and hence, the award under the head loss of income during the period



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of treatment is enhanced to Rs.30,000/-. Thus, the award is modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>	<i>Award amount enhanced or reduced or confirmed</i>
1	Transport Expenses	10,000/-	15,000/-	Enhanced
2	Nutrition and Attender Expenses	25,000/-	25,000/-	Confirmed
3	Pain and Suffering	50,000/-	50,000/-	Confirmed
4	Amenities	10,000/-	50,000/-	Enhanced
5	Partial permanent Loss of Income for 6 months	18,000/-	30,000/-	Enhanced
6	Damage to Cloth	1,000/-	1,000/-	Confirmed
7	40% disability calculating Rs.3,000/- per percentage	1,20,000/-	1,20,000/-	Confirmed
8	Medical Bills	1,77,920.20	1,77,920.20	Confirmed
	Total	4,11,920/-	4,68,920/-	Enhanced by Rs.57,000/-

15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,11,920/- is hereby enhanced to Rs.4,68,920/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

16. The respondents 2 and 4 are directed to deposit the award amount, now determined by this Court, less the amount already deposited, if any,



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within a period of six (6) weeks from the date of a receipt of a 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.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation: Yes/No

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To

1.The Motor Accidents Claims Tribunal
(Additional Special Judge) Krishnagiri.

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



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SUNDER MOHAN, J.

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