



C.M.A.No.1086 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1086 of 2023

Varadhan

... Appellant

Versus

1.Venkatesan

2.Reliance General Insurance Co. Ltd.,
Reliance House, No.6, 6th Floor,
Haddos Road, Nungambakkam,
Chennai – 600 006.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 23.01.2023 passed in M.A.C.T.O.P.No.4500 of 2018, on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

For Appellant : Mr.K.Ayyadurai

For R2 : Mr.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.A.C.T.O.P.No.4500 of 2018, dated 23.01.2023.

2.The claim petition was filed stating that on 22.07.2018, at about 17.00 hour, when the appellant was walking on the Ennore High Road, near IOC bus stop, the motorcycle bearing Regn No.TN-03-U-2787, ridden by its rider in a rash and negligent manner dashed against the appellant; that due to the said accident, the appellant sustained grievous injuries and that he was working as driver and hence, entitled to compensation of Rs.6,00,000/-.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the injuries and disability suffered by the appellant was exaggerated for the purpose



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of the case; that in any case, the compensation claimed was 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.13 on his side. On behalf of the 2nd respondent, R.W.1 was examined and Ex.R1 to Ex.R6 were marked. The disability certificate of the appellant was marked as Ex.C1.

6.The Tribunal after considering the oral and documentary evidence directed the 2nd respondent to pay a sum of Rs.2,77,414/- as compensation to the appellant at the first instance and thereafter, recover the same from the 1st respondent.

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

8.The learned counsel for the appellant submitted that the appellant was working as heavy vehicle driver and earning Rs.1000/- per day; that on account of the accident, he sustained fracture in both legs and was in the hospital for nearly 43 days as in-patient. Considering the



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nature of injuries, the Tribunal ought to have awarded compensation by determining functional disability and by adopting multiplier method. The learned counsel further submitted that though surgery was conducted and steel plates were implanted, no compensation was awarded for future medical expenses which included the costs for removal of implants and hence, prayed for allowing of the appeal.

9.The learned counsel for the appellant submitted that the 1st respondent remained *ex-parte* before the Tribunal and he prayed to dispense with notice to the 1st respondent and he has also made an endorsement to that effect. Hence, notice to the 1st respondent is dispensed with.

10.The learned counsel for the 2nd respondent submitted that the appellant had neither established the avocation nor the income. The appellant had also not established any functional disability so as to warrant award of compensation by adopting multiplier method and hence, prayed for dismissal of the appeal.



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 records, it is seen that admittedly, the appellant was in hospital and took treatment as in-patient for 43 days as could be seen from Ex.P2 and Ex.P3-discharge summaries. He was diagnosed with fracture proximal tibia on left / fracture lateral malleolus on right / fracture 2, 3, 4 metatarsal bone on right. The appellant deposed before the Tribunal that he was working as driver and marked Ex.P8-driving license. Ex.P8 reveals that the appellant had license for driving heavy vehicles. However, the appellant had not produced any document to prove his income. Considering the age, avocation, the year of accident and evidence on records, this Court is of the view that it would be just and reasonable to fix the notional income at Rs.15,000/-. The nature of injuries namely fracture in both legs and the fact that the appellant was carrying on work as lorry driver, suggest that the appellant would have suffered functional disability. Considering the disability certificate issued by the Medical Board, the injuries suffered by the appellant and his avocation, it would be just and reasonable to fix functional disability at 15%. The appellant was 45 years at the time of accident and the



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multiplier applicable is 13. Thus, the appellant would be entitled to compensation under the head disability in the following manner.

$$\text{Rs.15,000/-} \times 12 \times 13 \times 15/100 = \text{Rs.3,51,000/-}$$

13.As regards future medical expenses, the appellant had undergone surgery and steal plates which were implanted have to be necessarily removed. Considering the fact that the appellant had spent a sum of Rs.15,000/- for surgery in a Government Hospital, it would be just and reasonable to award Rs.15,000/- towards future medical expenses. The appellant would have suffered loss of income for a period of two month. Hence, the amount awarded under the head loss of income is enhanced to Rs.30,000/-. The compensation 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	1,40,000	3,51,000	Enhanced
2.	Medical Expenses	7,914	7,914	Confirmed
3.	Loss of Income	11,000	30,000	Enhanced
4.	Pain and Sufferings	30,000	30,000	Confirmed
5.	Transportation Expenses	10,000	10,000	Confirmed
6.	Nutrition Expenses	15,000	15,000	Confirmed
7.	Damages to Clothes	2,000	2,000	Confirmed
8.	Attender Charges	21,500	21,500	Confirmed
9.	Loss of Amenities	40,000	40,000	Confirmed
10.	Future Medical Expenses	-	15,000	Granted
	Total	2,77,414	5,22,414	Enhanced by Rs.2,45,000/-

14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,77,414/- is hereby enhanced to Rs.5,22,414/-, 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 2nd respondent/Insurance Company is



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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 thereafter recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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rst

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

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

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



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SUNDER MOHAN, J.

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