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C.M.A.No. 4075 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM:

THE HON'BLE Mr. JUSTICE A.A.NAKKIRAN

C.M.A.No.4075 of 2019

Suresh

... Appellant

Vs.

1. Anandha Kumar
[R1 remained exparte before the Tribunal
and his presence may be dispensed with]
2. Shriram General Insurance Company Limited,
No.66, 2nd Floor,
City Centre Complex,
Thirumalaipillai Road,
T.Nagar,
Chennai. 600 017.

... Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to enhance and to set aside the award dated 18.08.2016 made in M.A.C.T.O.P.No.313 of 2013 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Ponneri.

For Appellant : Mr.A.G.F.Terry Chella Raja

For R2 : Mr.K.Poomalai

For R1 : Set Ex parte before the Tribunal



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JUDGEMENT

The Award and decree dated 18.08.2016 passed in M.A.C.T.O.P.No.313 of 2013 on the file of the Motor Accident Claims Tribunal/ Subordinate Judge, Ponneri, is under challenge in the present Civil Miscellaneous Appeal.

2. The appellant/claimant, unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award, has preferred this appeal seeking for enhancement of compensation.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded compensation of Rs.9,45,700/- together with interest and costs to the Appellant/claimant, which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Pain and Sufferings	50,000/-
Loss of Income	10,000/-
Medical Expenses	6,85,700/-
Rich and nutritious food	10,000/-
Transport expenses	10,000/-
Permanent disability	1,80,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
TOTAL	9,45,700/-

4. Before the Tribunal, the appellant/claimant has filed 14 documents which were marked as Ex.P1 to Ex.P14 and examined himself as PW1 and the Doctor, examined the claimant as PW2. On the side of the second respondent/Insurance Company, neither any document was filed, nor any witness was examined before the Tribunal. The first respondent was set-exparte before the Tribunal.

5. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensurate with the grievousness of the injuries sustained by the appellant/claimant. The appellant/claimant sustained severe traumatic brain injury and other multiple grievous injuries. He had taken treatment as in-patient for one month. The Doctor assessed the disability at 75%. However, the Tribunal has reduced the same and has assessed the disability at 60%. He was working as Hospital Management staff in private hospital and there is a



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loss of earning power. He further submitted that the Tribunal has failed to consider the age, income and occupation of the injured in proper perspective.

The Tribunal, without appreciating the evidence on record properly, has awarded the compensation of Rs.9,45,700/- in *toto* and the said quantum of compensation is unreasonable. Hence, the claimant prayed to enhance the compensation.

6. Per contra, the learned counsel appearing for the second respondent submitted that the compensation claimed by the appellant/claimant is highly excessive and baseless. He further submitted that the Tribunal, after analysing the evidence on record, has rightly awarded the compensation to the appellant/claimant and hence, the award passed by the Tribunal does not warrant any interference by this Court. Hence, he prays for dismissal of the appeal.

7. The Tribunal has relied on Ex.P1/FIR, Exs.P2 & P3/ Accident Reports; Ex.P4/Discharge summary; Ex.P5/Medical bills, Exs.P6,7,8,12 & 14/ X-ray and Scan reports, Ex.P13/Disability certificate of the appellant, based on which, the Tribunal has fixed Rs.50,000/- towards pain and suffering;



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Rs.10,000/- towards loss of income, Rs.6,85,700/- towards medical expenses, Rs.10,000/- for nutritious food, Rs.10,000/- for transport expenses and Rs.1,80,000/- for permanent disability.

8. On a perusal of records, it is seen that the Tribunal has not properly considered the oral and documentary evidence. Considering the age and gravity of the injuries sustained by the appellant and also the facts and circumstances of the case, this Court is of the considered view that Rs.75,000/- is to be awarded towards pain and sufferings; Considering the age of the claimant, the notional income of the claimant is fixed at Rs.6000/- per month. As he had suffered from traumatic brain injury coupled with multiple grievous injuries, this Court is of the view that he lost his income for nearly six months. Accordingly, the awarded amount of Rs.10,000/- under the head of loss of income is enhanced to Rs.36,000/- (6000 x 6 months) which is just and fair and reasonable. Considering the nature of injury sustained by the injured, the disability of the claimant is fixed at 75%. The disability of the claimant was assessed by the Tribunal as 60% based on cross-examination of PW2/Doctor and Ex.P6 to Ex.P8, Ex.P12, Ex.P14 and Rs.3000/- for each percentage, which is not proper and hence the same needs revisit. From the records, it is seen that



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he has taken treatment in private hospital even after discharge from the Government Hospital. This court is of the considered opinion that the disability should be fixed at 75% and Rs.4000/- is the proper assessment for each percentage instead of Rs.3000/- and this Court has arrived at Rs.3,00,000/- (4000 x 75%) towards permanent disability.

9. The amounts awarded under the heads of Nutritious food Transport seems to be very low and thus they are enhanced to Rs.20,000/- and Rs.15,000/- respectively. Since the award granted under the head Medical expenses, seems to be reasonable, no interference of this Court is required under that head. Thus, the break-up details of the modified compensation are as follows:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Pain and Sufferings	75,000/-
Loss of Income	36,000/-
Medical Expenses	6,85,700/-
Rich and nutritious food	20,000/-
Transport expenses	15,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
Permanent disability	3,00,000/-
TOTAL	11,31,700/-

10. In the result,

a) This Civil Miscellaneous Appeal filed by the claimant / appellant is partly allowed, by enhancing the total amount of compensation from Rs.9,45,700/- to Rs.11,31,700/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit and costs as awarded earlier by the Tribunal, less the amount if any already deposited.

(b) The second respondent/Insurance Company is directed to deposit the Award amount together with interest from the date of claim petition till the date of deposit and costs as assessed by the Tribunal, to the credit of M.A.C.T.O.P.No.313 of 2013 within a period of four weeks from the date of receipt of a copy of this Judgment. It is needless to state that the appellant



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shall pay necessary Court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the appellant/claimant through RTGS within a period of two weeks thereafter, in the light of the judgment of this Court reported in *2016 (2) Law Weekly 561 [The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and Others]*

(d) There shall be no order as to costs.

28.04.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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To

- 1.The Subordinate Judge, Ponneri
Motor Accident Claims Tribunal,
Ponneri.
- 2.The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.

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