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C.M.A.No.3762 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.3762 of 2019

Nadimuthu

.. Appellant

Vs.

1.Jeevendaran

2.National Insurance Company Limited

74-A, 1st Floor, Paramathy Road

Namakkal GPO, Namakkal-637 001.

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the Award dated 26.11.2018 made in MCOP No.93 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Tiruchengode.

For Appellant

: Mr.C.Parneedharan

For Respondents

: Mr.J.Chandran for R2



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The Award dated 26.11.2018 passed in MCOP No.93 of 2013 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Tiruchengode, is under challenge in the present Civil Miscellaneous Appeal.

2. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.54,219/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Medical Expenses as per Ex.P5 after deducting Rs.300/-	4,219/-
Pain and suffering	15,000/-
Extra Nourishment	5,000/-
Disability of 10% at Rs.3000/- per percentage	30,000/-
Total	54,219/-

3. Before the Tribunal, the Appellant/claimant has filed 8 documents



which were marked as Ex.P1 to Ex.P8 and examined himself as PW1 and the Doctor, who examined the claimant as PW2. On the side of the 2nd respondent/Insurance Company, two witnesses were examined as RW1 and RW2 and Ex.R1 and R2 were marked. The 1st respondent/owner of the vehicle was set exparte.

4. The learned counsel appearing on behalf of the appellant mainly contended that the compensation awarded by the Motor Accident Claims Tribunal is not in commensuration with the grievousness of the injuries sustained by the appellant/claimant. The appellant/claimant sustained grievous injuries and fracture (left clavicle fracture and dislocation due to the accident and had taken treatment as inpatient on 05.07.2012 and 06.07.2012. He further contended that after the accident, he lost his entire earning power and the compensation awarded under the heads of pain and suffering and extra nourishment is very meagre. No amount was awarded under the head of loss of income, transport to hospital, loss of amenities and attender charges. Further, the quantum of compensation awarded under the



other heads are very meagre and hence, he prays to enhance the award.

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5. The learned counsel appearing on behalf of the second respondent/Insurance Company contended that the injuries suffered by the appellant/claimant are not so grave. The Tribunal has awarded a reasonable compensation and there is no error as such. Hence, he prays for dismissal of the appeal.

6. The accident occurred on 05.07.2012 at about 7.30 a.m at Thiruchengode - Erode Road, near K.S.R College. The Thiruchengode Rural police station registered a case in Crime No.530 of 2012 under Sections 279 and 337 of IPC. The appellant/claimant sustained grievous injuries viz., i) cut injury on the back of the head which was bleeding and ii) fracture on his left shoulder. The Tribunal adjudicated the issues with reference to the documents and evidences produced by the respective parties. The negligence was attributed against the driver of the car, which belongs to the 1st respondent herein. The findings of the Tribunal is that the car driver



had driven the vehicle in a rash and negligent manner which resulted in an accident.

7. A perusal of Ex.P4 discharge summary and Ex.P5 medical bills would reveal that the appellant/claimant sustained cut injury on his back head and also fracture on his left shoulder and initially, he had taken treatment as inpatient at Government Hospital, Tiruchengode and thereafter, he had taken treatment at Sulochana Karupannan Hospital, Erode for about one month. The Appellant/claimant was a coolie, aged 56 years at the time of the accident. But, the Tribunal has not awarded any amount towards loss of income. The grievous injuries caused disability and due to which, the appellant/claimant was incapacitated to perform his work in a routine and normal manner. This Court is of the considered view that the appellant/claimant would have been unable to do his work atleast for a period of one month in a routine and normal manner. In view of the above, it would be appropriate to fix Rs.10,000/- as monthly income and thereby, loss of earning is calculated at Rs.10,000 x 1 month = Rs.10,000/-. The Tribunal



has failed to award any amount towards transport charges. In the considered view of this Court, it would be appropriate to award a compensation of Rs.3,000/- towards transport charges. The compensation awarded under the head of extra nourishment is very low. Hence, this Court is inclined to enhance a sum of Rs.10,000/- instead of Rs.5,000/-.

8. Insofar as the other heads of the compensation are concerned, the assessment of the compensation under the said heads by the Tribunal is a just compensation and it does not call for any interference by this Court.

9. For the foregoing reasons, the award passed by the Tribunal is modified as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of earning	Nil	10,000/- (10,000 x 1)
Medical Bills	4,219/-	4,219/-
Pain and suffering	15,000/-	15,000/-
Transport charges	Nil	3,000/-



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Extra Nourishment	5,000/-	10,000/-
Disability Of 10% at Rs.3000/- per percentage	30,000/-	30,000/-
Total	54,219/-	68,000/-

Accordingly, the claimant is entitled to a compensation of Rs.68,000/- (Rupees sixty eight thousand only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.54,219/- to Rs.68,000 /-. No costs.

(ii) The second respondent/insurance company is directed to deposit



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the revised compensation of Rs.68,000/- with interest at the rate of 7.5% p.a. from the date of claim petition till the date of realization, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment.

(iii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the appellant along with accrued interest through RTGS within a period of two weeks thereafter.

27.04.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
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To

1.The Motor Accident Claims Tribunal,
Subordinate Judge
Tiruchengode.

2.The Section Officer,
V.R Section,
High Court, Madras.

A.A.NAKKIRAN, J.



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