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C.M.A.No.2573 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2573 of 2019

Nachiyappan

.. Appellant

Vs.

1.Kanthimathi

2.The National Insurance Co., Ltd.,
DO X hero vertical 101-106 BMC House,
Connaught Place, New Delhi, Branch at
73, Perundurai Road, Near Collector Office,
Erode.

3.Rajaprabu

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.03.2019 made in MCOP.No.282 of 2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : No Appearance for R1
Mr.J.Chandran for R2



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J U D G M E N T

This appeal is filed by the appellant/claimant seeking enhancement of compensation against the judgment and decree dated 28.03.2019 passed in MCOP.No.282 of 2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Erode.

2. The facts of the case, in brief, is as follows:

The accident occurred on 17.09.2016 at 8.20 hours, when the appellant was crossing the Tiruchengode-Pallipalayam road in front of K.S.R.College main gate, from North to South and entered into South end and standing on the mud road. The rider of the motor cycle bearing Regn.No.TN-69-F-0891 came from Tiruchengode to Pallipalayam by riding the motor cycle in a rash and negligent manner dashed against the claimant/appellant, due to which, the appellant sustained injury on his head and right hand and left leg and lost his front side teeth and multiple injuries all over the body. The Thiruhengode Rural police Station, Namakkal

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District, have registered registered a case in Crime No.445 of 2016 under Sections 279 and 337 of IPC. Thereafter, the claim petition was filed by the appellant and the Tribunal adjudicated the issues with reference to the documents and evidences. The second respondent/Insurance company has defended their case. The Tribunal has awarded a total compensation of Rs.3,21,300/-

3. The learned counsel appearing on behalf of the appellant has mainly contended that the quantum of compensation granted by the Tribunal is very meagre. The compensation granted towards transport to hospital and extra nourishment are on the lower side and based on that, the appellant/claimant has chosen to file the present appeal. He further submitted that the Tribunal has erroneously adopted the multiplier method instead of adopting the percentage method. The Tribunal has erroneously assessed the disability at 15% and it has to be enhanced. This apart, the appellant/claimant is a musical instruments performer in the functions of marriages, reception, temple festivals, etc., and earning a sum of Rs.12000/-

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per month. Thus, the compensation awarded by the Tribunal is very meagre.

For the aforesaid reasons, the award is liable to be enhanced.

4. The learned counsel for the second respondent has disputed the said contention by stating that considering the nature of the injuries, the Tribunal has awarded a reasonable compensation and there is no excessive award and accordingly, the appeal is liable to be dismissed.

5. Insofar as the assessment of disability by the Tribunal is concerned, the PW2/doctor assessed the grievous injury in the head, right elbow, fracture in left knee, loss of teeth, lacerated injuries in the right thigh and all over the body and PW3/doctor assessed the disability at 40% for injury on his head and right hand left leg and lost his front side teeth and multiple injuries all over the body. But, the Tribunal has reduced the disability and totally fixed the disability at 15%, considering the nature of injuries and the evidence of PW2 and PW3 and Ex.P3/medical bills, Ex.P45/X-ray and Ex.P8 and Ex.P9/Accident Registers; Ex.P13 Wound



certificate. Hence, the disability fixed by the Tribunal is not a correct assessment.

6. Considering the nature of the injuries as well as the disability sustained by the claimant, this Court is of the considered opinion that it is not a functional disability and in fact, the claimant is employed, more specifically he was running a musical instrument performer in the functions of marriages, reception, temple festivals, etc., Therefore, there is no future loss of income. This being the factum, the award of compensation by adopting the multiplier is unnecessary.

7. As per the judgment of this Court dated 10.01.2020 passed in ***CMA.No.4645 of 2019, M.Chinnathambi Vs. S.Deepa and another***, it is stated as follows:

“Taking into consideration the raise in cost of living, it will be reasonable to award a sum of Rs.4,000/- per percentage for the accident of the year 2014 and 2015 and Rs.5,000/- per percentage for the accident from the year 2016 onwards towards disability certified by



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the qualified Doctor or Medical Board. In the present case, the accident has occurred on 01.07.2016. A sum of Rs.5,000/- per percentage of disability is granted. Accordingly, a sum of Rs.60,000/- (Rs.5,000/- X 12%) is awarded towards disability by awarding a sum of Rs.5,000/- per percentage of disability. "

8. In view of the above cited judgment, a sum of Rs.5,000/- for 1% disability shall be granted considering the year of the accident is 2016. Accordingly, the disability compensation is enhanced to Rs.4,13,300/- by this Court instead of Rs.3,21,300/- assessed by the Tribunal.

9. 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.

10. For the foregoing reasons, the compensation awarded by the Tribunal under the impugned award is modified in the following manner:



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<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Disability and loss of earning power	1,08,000 (12000x12x15% x5)	2,00,000 (40% x 5000)
Loss of income & others	36,000/-	36,000/-
Transport expenses	3,000/-	3,000/-
Extra Nourishment	9,000/-	9,000/-
Damages for clothes	500/-	500/-
Medical Expenses and others	1,14,800/-	1,14,800/-
Pain and sufferings	50,000/-	50,000/-
Total	3,21,300/-	4,13,300/-

11. In the result,

(i) This appeal is partly allowed and the second respondent is directed to deposit the enhanced award amount i.e, Rs.4,13,300/- along with interest at the rate of 7.5% per annum and costs, after deducting the amount already deposited, if any, to the credit of MCOP.No.282 of 2017 within a period of six weeks from the date of receipt of a copy of this Judgment.



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(ii) On such deposit being made, the Tribunal is directed to transfer the award amount to the bank account of the appellant/claimant along with accrued interest through RTGS within a period of two weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

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

1.The Motor Accident Claims Tribunal,
Special Subordinate Court, Erode.

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

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