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C.M.A. No. 1843 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 1843 of 2021

Syed Shabeer Ahmed

... Appellant / Petitioner

Vs.

1. Kamal

2. ICICI Lombard General Insurance Co. Ltd.,
Chottabhai Centre, 2nd and 3rd Floor,
Nungambakkam High Road,
Nungambakkam,
Chennai - 600 034.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 29.01.2019 passed in M.A.C.T.O.P. No. 4341 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

For Appellant : M/s. M. Malar

For R1 : No Appearance

For R2 : M/s. B. Siva Kollappan



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JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant for enhancement of compensation awarded in M.A.C.T.O.P. No. 4341 of 2015, dated 29.01.2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. The case of the claimant is that on 01.01.2015 at about 3:00 Hours, while he was walking back side of Gandhi statue, Service Road, Marina Beach, Chennai, a car bearing Registration No.TN-22-CH-0326 belong to the first respondent came from South to North direction, driven by its driver in rash and negligent manner, hit against the claimant causing grievous injuries. A criminal case was also registered against the driver of the first respondent car in Cr.No.3/T1/2015 on the file of the D6, Anna Square Traffic Investigation, Chennai. Due to the injuries sustained, the



claimant has come forward with a claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166 of the Motor Vehicles Act and Rule 3 of the Motor Vehicles Rules.

4. The first respondent, who is the owner of the car bearing Registration No.TN-22-CH-0326 has not contested the claim and remained ex-parte. The second respondent - insurance company, who is the insurer of the first respondent car has filed a counter and contended the manner in which the accident was taken place and also disputed the age, occupation, income of the claimant and the nature of injuries. The second respondent - insurance company also stated that the accident was taken place only due to the negligence on the part of the claimant and contended that the compensation claimed under various heads is on the higher side, hence prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.9 were marked, on the side of the second respondent, no witnesses were examined and no exhibits were marked.



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6. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the first respondent car bearing Registration No.TN-22-CH-0326 is responsible for the accident. In point Nos.2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.88,300/- along with interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the second respondent - insurance company to indemnify the first respondent and to pay the compensation to the claimant.

7. Aggrieved over the quantum of compensation, the claimant has come forward with this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the claimant has submitted that the only grievance in the compensation is that, he has sustained both bone fracture in the left leg and he was also examined by the P.W.2, a private Doctor, who has assessed the disability of the claimant as 30% and the same was not properly appreciated by the Tribunal and it took Suo-moto fixed the disability as 10% and hence prays to modify the same.



9. Per contra, the learned counsel appearing for the insurance company has submitted that before the Tribunal, except the O.P. (out-patient) chits, marked as Ex.P.3, no other documents to show that the claimant has undergone treatment for both bone fracture have been produced and the Tribunal has also given a specific finding that the evidence of the P.W.2, the doctor is not trust worthy and hence, the Tribunal based on the evidence placed on record has rightly fixed the disability as 10%, hence prays to confirm the same.

10. Heard the submissions made on both sides and perused the materials placed on record:

11. The Tribunal has recorded that the claimant has sustained both bone fracture in his left leg and the injuries appears to be grievous in nature and however, the Tribunal has held that the P.W.2, who is not the person given treatment to the claimant but assessed the disability after three years of the injury and also no calculation details was given, hence, the evidence of P.W.2 was rightly rejected by the Tribunal. However, the finding of the Tribunal shows that the Tribunal has accepted the case of the claimant that he has sustained both bone fracture in his left leg and also sustained



grievous injuries during the accident. On perusal of Ex.P.2, the out-patient chits issued by the Government Royapettah Hospital, which shows the treatment history and the injuries sustained by the claimant and also it is recorded that the claimant has been given conservative treatment.

12. In this case, the claimant was not assessed by a Medical Board to give his disability, he chose a Private Doctor to prove his disability and the same was rightly rejected by the Tribunal. However, the Ex.P.2, Ex.P.3 and Ex.P.5, x-ray corroborates the evidence of the claimant that he has sustained both bone fracture, by considering the same, this Court is of the view that the percentage of disability fixed by the Tribunal is on the lower side for both bone fracture and hence, the same is modified to 20%.

13. The Tribunal has awarded Rs.3,000/- per percentage of disability but, this Court judgment in *M. Chinnathambi vs. S. Deepa and another* reported in *[CDJ 2020 MHC 1013; 2020 (1) TNMAC 617]*, this Court has awarded Rs.4,000/- per percentage of disability for the accident cases taken place from the year 2015, hence, considering the date of accident, this Court is inclined to modify the award of Rs.3,000/- per



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percentage of disability by the Tribunal to Rs.4,000/-, hence the total compensation granted under the disability is modified to Rs.80,000/- (Rs.4,000/- x 20% of disability).

14. The Tribunal has awarded compensation of Rs.10,000/- under the head future prospectus but there is no evidence produced by the claimant to show whether he is entitled for loss of future prospectus, hence this Court is of the view that only in the case of injuries resulting in Functional Permanent Disability, the claimants are entitled for future prospectus along with compensation under the head loss of earning capacity. Whereas, in this case, there is no compensation for loss of earning capacity awarded and there is no evidence placed on record to show the requirements of further medical treatment. Accordingly, the compensation awarded under the head loss of future prospectus is removed. As far as the compensation awarded under other heads are concerned, the Tribunal has granted a just compensation and this Court is inclined to confirm the same.

15. Accordingly, the award passed by the Tribunal under various heads are hereby 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 reduced
1.	Disability	30,000/-	80,000/-	Enhanced
2.	Pain and Sufferings	20,000/-	20,000/-	Confirmed
3.	Extra Nourishment	10,000/-	10,000/-	Confirmed
4.	Transportation expenses	3,000/-	3,000/-	Confirmed
5.	Medical Expenses	1,214/-	1,214/-	Confirmed
6.	Loss of earnings	14,000/-	14,000/-	Confirmed
7.	Loss of Future prospectus	10,000/-	10,000/-	Rejected
	Total Compensation	88,214/- (88,300/- round off)	1,28,214/-	Enhanced

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.88,300/- is hereby enhanced to **Rs.1,28,214/- [Rupees One Lakh Twenty Eight Thousand Two Hundred and Fourteen only]** together along with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent - insurance company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this



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judgment to the credit of M.C.O.P.No.4341 of 2015 on the file of the Special Sub Judge I, Motor Accidents Claims Tribunal, Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since, this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

09.11.2023

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Sub Judge I,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai
2. The Section Officer,
V.R.Section,



High Court, Chennai.

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K. RAJASEKAR, J.
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