



C.M.A.No.13 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.13 of 2014

V.Swaminathan

.. Appellant

Vs.

1.N.Madhavan

2.United India Insurance Company Limited

Regional Office:1090, Poonamallee High Road

Periamet, Chennai-600 007.

..Respondents

Prayer: The Civil Miscellaneous Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.07.2013 made in MCOP No.733 of 2008 on the file of the Motor Accident Claims Tribunal/Special Sub Judge-I, Court of Small Causes, Chennai.

For Appellant

: Mr.M.Malar

For Respondents

: Mr.M.J.Vijayaraghavan for R2



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The judgment and decree dated 11.07.2013 passed in MCOP No.733 of 2008 on the file of the Motor Accident Claims Tribunal/Special Sub Judge-I, Small Causes Court, Chennai, 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.

3. The Motor Accidents Claim Tribunal, under the impugned award, has awarded a compensation of Rs.1,20,086/- together with interest and costs to the Appellant/claimant which is detailed hereunder:

<i>Heads</i>	<i>Award Amount (Rs.)</i>
Loss of earning- 4500 x 3	13,500/-
Transport to hospital, Extra Nourishment,	5,000/-



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<i>Heads</i>	<i>Award Amount (Rs.)</i>
articles and dress.	
Medical treatment	14,586/-
Pain and suffering	15,000/-
Disability of 40% at Rs.1800 per percentage	72,000/-
Total	1,20,086/-

4. 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, neither any document was filed nor any witness was examined before the Tribunal. The 1st respondent was set exparte.

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 commensuration with the grievousness of the injuries sustained by the appellant/claimant. The appellant/claimant sustained

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multiple fractures due to the accident and had taken treatment as inpatient for a period of 19 days as seen from the exhibit P2 discharge summary. The doctor assessed the disability at 55%. However, the Tribunal has reduced the same and has assessed the disability at 40%. The disability compensation awarded by the Tribunal as seen from the impugned award is Rs.72,000/- calculated at Rs.1,800/- per percentage of disability and the same is to be enhanced. No amount was awarded under the head of attender charges. Though Ex.P5 medical certificate has been produced by the claimant, the Tribunal has failed to award any compensation towards future medical expenses. Further, the quantum of compensation awarded under the other heads are very meagre and hence, he prays to enhance the award.

6. The learned counsel appearing on behalf of the second respondent/Insurance Company refuted the contention raised by the appellant by stating that the appellant/claimant had taken treatment as inpatient only for 19 days and he had not taken treatment continuously in



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view of the fact that the injuries are not so grave. Therefore, the Tribunal has awarded a reasonable compensation and there is no error as such. Thus, the award given by the Tribunal is to be confirmed and the appeal is to be dismissed.

7. The accident occurred on 20.12.2007 at about 10.30 a.m at East Coast Road, Kunnathur. The Satras police station registered a case in Crime No.340 of 2007. The appellant/claimant sustained grievous injuries viz., i) Acetabular fracture right side, ii) split fracture lateral condyle right tibia, iii) multiple fractures in right leg and multiple injuries all over his body. 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.



8. The Doctor (PW2) has assessed the disability of the Appellant/claimant at 55%. However, the Tribunal has reduced the disability to 40%. In the considered view of this Court, after giving due consideration to the nature of the injuries, this Court assesses the disability suffered by the Appellant/claimant at 50%. As far as the quantum of compensation is concerned, the Tribunal has fixed a sum of Rs.1,800/- for one percentage of disability. Therefore, this Court is of the considered opinion that the accident occurred in the year 2007 and fixing a sum of Rs.1,800/- is on the lesser side. The Appellant/claimant is a businessman and he had taken his treatment for about 19 days as seen from Ex.P2 discharge summary. Thus, a sum of Rs.2,000/- for one percentage of disability would be appropriate considering the fact that the accident occurred during the year 2007.

9. A perusal of Ex.P2 discharge summary would reveal that the appellant/claimant sustained fracture of Acetabulum right resulting in foot drop and split fracture of lateral condyle right tibia resulting in total loss of



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right leg and he had taken treatment as inpatient at Miot Hospital for about 19 days. The Appellant/claimant was doing business in real estate, aged 40 years at the time of the accident. But, the Tribunal had fixed the monthly income of the appellant/claimant as Rs.4,500/- and thereby, calculated the loss of earning at Rs.4,500/- x 3 months = Rs.13,500/-, which is very meagre. 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 at least for a period of four months, the Appellant/claimant would have been unable to do his work in a routine and normal manner. In view of the above, it would be appropriate to fix Rs.5000/- as monthly income and thereby, loss of earning is calculated at Rs.5000 x 4 months = Rs.20,000/-. The Tribunal has failed to award any amount towards attender charges and future medical expenses. In the considered view of this Court, it would be appropriate to award a compensation of Rs.2,000/- towards attender charges and Rs.10,000/- towards future medical expenses.



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10. 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.

11. 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	13,500/- 4500 x 3	20,000/- 5000 x 4
Transport to hospital, extra nourishment, articles and dress	5,000/-	5,000/-
Medical treatment	14,586/-	14,586/-
Pain and suffering	15,000/-	15,000/-
Disability	72,000/- (1800 x 40%)	1,00,000/- (2000 x 50%)
Attender charges	Nil	5,000/-
Future Medical Expenses	Nil	10,000/-
Total	1,20,086/-	1,69,586/- rounded off to 1,69,590/-



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Accordingly, the claimant is entitled to a compensation of Rs.1,69,590/- (Rupees one lakh sixty nine thousand five hundred and ninety only) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization.

12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.1,20,086/- to Rs.1,69,590 /-. No costs.

(ii) The second respondent/insurance company is directed to deposit the revised compensation of Rs.1,69,590/- 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.



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(iii) On such deposit, the appellant/claimant is permitted to withdraw the entire amount by filing an appropriate application and the payments are to be made through RTGS.

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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 Judge-I dealing with MCOP cases,
Court of Small Causes, Chennai.
- 2.The Section Officer,
V.R Section,
High Court, Madras.

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A.A.NAKKIRAN, J.
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