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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:31.03.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.1609 of 2020

Perumal

... Appellant

Vs.

1.B.Ravichandran

2.The Oriental Insurance Co. Ltd.,
2nd Floor, Vijay Shopping Complex,
217-16, Bangalore Main Road,
Zuzuvadi, Hosur-635 109.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 20.12.2019 made in M.C.O.P.No.90 of 2015 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Krishnagiri.

For Appellant : Mr.V.Kumaravelan

For respondent : Mr.J.Chandran, for R2

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant against the judgment and decree dated 20.12.2019 in M.C.O.P.No.90 of 2015 on



the file of the MACT Chief Judicial Magistrate, Krishnagiri.

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2. The appeal is filed by the claimant seeking enhancement of compensation for the injuries sustained by him in the accident. The negligence and liability are not questioned by the respondents.

3. The brief facts of the case leading to the appeal are that on 03.04.2014, while the petitioner was riding his Honda Activa Scooter, a Tata Indica Vista Car, driven by its driver in a rash and negligent manner and dashed against the appellant's bike. Due to the impact, the appellant sustained severe injuries on head, hip, both the legs and other parts of the body. As the accident occurred due to negligence of the first respondent's Driver, the appellant filed the claim petition seeking a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident. The appellant was working as a salesman in TASMAC shop at Uddanapalli and earning a sum of Rs.10,000/- per month.

4. The first respondent remained exparte and the second respondent insurance company contested the claim petition by filing counter. The second respondent denied all the averments made in the



claim petition apart from disputing the negligence liability and quantum.

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5. Before the claims Tribunal, the appellant examined himself as P.W.1 and marked Exs.P.1 to P.18 in support of his claim. The disability certificate was marked as Ex.C.1. The respondent did not file any document, nor examined any witness.

6. The Tribunal on assessment of the entire evidence on record, returned a finding of negligence against the Driver of the first respondent assessed the compensation at Rs.9,07,339 at 7.5% interest and mulcted the liability on the second respondent Insurance company. Not satisfied with the award passed by the claims Tribunal, the claimant has filed the above appeal.

7. The learned counsel for the appellant submitted that even though documentary evidence for the payment of Rs.1,02,562/- towards professional fees of the Doctor was filed as Ex.A.4, the Tribunal rejected the claim on an erroneous assumption that the said amount was paid towards professional tax for which claimant was not entitled. The learned counsel further submitted that Tribunal failed to award a sum of



Rs.15,400/- towards extra nutrition which is also evidenced by document Ex.A.10. The learned counsel submitted the Tribunal having adopted the unit method for erred in awarding Rs.3,000/- only towards percentage of disability overlooking that the accident took place in the year 2014. The learned counsel further stated that the awards towards transport, loss of income during the treatment period and pain and suffering were meagre and same should be enhanced.

8. The learned counsel for the respondent on the other hand submitted that the award of the Tribunal was just, fair and reasonable and it does not call for any interference in the appeal. The learned counsel further submitted that the interest awarded at the rate of 8% per annum was on higher side and therefore, the interest had to be reduced to 7.5% only.

9. I have heard both the learned counsels and perused the entire material placed on record.

10. It is seen that under Ex.A4 series particularly document No.55, that the appellant paid a sum of Rs.1,02,562/- towards



professional fee. In my view, as rightly pointed out by the learned counsel for the appellant, the Tribunal erroneously assumed that the amount was paid towards professional tax and not professional fee. The document clearly states that a sum of Rs.1,02,562/- was collected towards professional fee and not professional tax and I am of the view that appellant is entitled for a sum of Rs.1,02,562/- towards medical expenses incurred by him towards professional fee of the Doctor. I am in agreement with the learned counsel for the appellant that the appellant would be entitled to a sum of Rs.15,400/- towards nutritious food as the same is supported by Doc.No.54 in Ex.A.10 series. I therefore, hold that appellant is entitled to a sum of Rs.15,400/- towards extra nutrition. The Tribunal awarded a sum of Rs.3,000/- per percentage of disability. It is seen that the accident occurred on 03.04.2014 and therefore as laid down by this Court in ***M.Chinnathambi vs. S.Deepa, National Insurance Co. Ltd.***, reported in 2020 (1) TNMAC 617 (Mad), the appellant would be entitled to a sum of Rs.4,000/- per percentage of disability. For partial permanent disability assessed at 60% under Ex.C1, the appellant would be entitled to a sum of Rs.2,40,000/-. I am afraid that the submissions of the learned counsel as regards the other heads cannot be countenanced as I am of the view that the awards towards transport expenses, loss of



income during treatment period, attender charges, pain and suffering are just fair and reasonable, therefore the same are confirmed. In fine, the award of the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Medical Expenses	5,10,339/-	5,10,339/- +1,02,562/- =6,12,901	Enhanced
2.	Transportation Charges	30,000/-	30,000/-	Confirmed
3.	Loss of Income	12,000/-	12,000/-	Confirmed
4.	Damages to Clothing and Articles	5,000/-	5,000/-	Confirmed
5.	Extra Nourishment	10,000/-	15,400/-	Enhanced
6.	Attender Charges	10,000/-	10,000/-	Confirmed
7.	Pain and Suffering	1,50,000/-	1,50,000/-	Confirmed
8.	Disability	1,80,000/-	2,40,000/-	Enhanced
	Total	Rs.9,07,339/-	Rs.10,75,301/-	Enhanced by Rs.1,67,962/-

11. The claimant would be entitled to an enhanced compensation of Rs. 1,67,962/- which is rounded to Rs.1,68,000/-. It is further made



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clear that for the enhanced compensation of Rs.1,68,000/- the appellant shall be entitled for interest at the rate of 7.5% per annum and not at 8% as awarded by the Tribunal. It is submitted by the learned counsel for the appellant that the award of the Tribunal was deposited by the insurance company and the same was withdrawn by the appellant. Therefore, a direction is issued to the insurance company to deposit the enhanced amount of Rs.1,68,000/- along with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of copy of the order. On such deposit being made the appellant shall be entitled to withdraw the amount by making appropriate application before the Tribunal. This Civil Miscellaneous Appeal is partly allowed. No costs.

31.03.2023

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Index : Yes/No

Neutral Citation : Yes/No



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N.MALA, J.
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To:

1.The Motor Accidents Claims Tribunal
Chief Judicial Magistrate, Krishnagiri.

C.M.A.No.1609 of 2020

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