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C.M.A.No.2420 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2420 of 2021

R. Krishnan

... Appellant /

petitioner

Vs.

1. K. Chinassamy

[R1 remained ex-parte before Tribunal.

Hence notice to R1 dispensed with]

2. P. Sakthivel

3. The Divisional Manager,

The New India Assurance Co., Ltd.,

Divisional Office-3, Sharon Building, 161-A,

East Veli Street, Madurai – 635 001.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 16.02.2021, made in M.C.O.P.No.456 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr. S. P. Yuvaraj

For R1 & R2 : No appearance

For R3 : Mr. K. Thirunavukkarasu



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation against the Award passed in M.C.O.P.No.456 of 2019, dated 16.02.2021, on the file of the Motor Accidents Claim Tribunal, Special Sub Court, Krishnagiri.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 05.01.2018, the petitioner was riding his two-wheeler on Krishnagiri to Dharmapuri road slowly and cautiously on the extreme left side of the road. While he reached near Morappur Diversion at about 15.30 hours, a lorry bearing Registration No.TN29 BY 4629 which was proceeding in front of him had suddenly applied brake, which resulted in causing accident and the two-wheeler hit on the rear side of the lorry. Due to which, the claimant has sustained several multiple injuries and after taking treatment, he has come forward to file claim petition claiming compensation of Rs.35,00,000/-. In this regard, a



criminal case was also registered against the driver of the lorry in Crime No.380 of 2018 under Sections 279, 337 of IPC on the file of the Kariamangalam Police Station.

4. The first respondent had purchased the vehicle from the second respondent, who was the original owner of the lorry and subsequently, name of owner of the lorry was changed in the name of second respondent. The third respondent is the insurer of the lorry.

5. The first and second respondents have not contested the claim and were remained ex-parte. The third respondent has contested the claim filed counter and contended that the claimant has negligently drove the two-wheeler and hit on the parked lorry. Hence, the accident had happened due to the negligent act on the part of the claimant and that he is not entitled for any compensation and the compensation claimed under various heads is also disputed. Hence prays to dismiss the claim petition.



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6. Based on the evidences placed on record, in Point No.1, the Tribunal has considered the negligence aspect alleged by both sides and has held that the claimant has also contributed to the accident and the negligence was fixed on both sides in the proportionate of 25% on the claimant and 75% on the driver of the lorry. In Point No.3, the Tribunal has quantified the compensation and awarded a total compensation of Rs.10,50,920/- and also directed the respondent to pay 75% of the award amount.

7. Aggrieved over the quantum of compensation fixed by the Tribunal the claimant has filed this appeal for enhancement of compensation. The respondent has not challenged the award.

8. The learned counsel for the claimant has submitted that the notional income fixed by the Tribunal for awarding compensation to the claimant is not in accordance with the norms followed, hence for the limited point of fixing loss of income, this appeal has been filed and in other aspects, he is not making any challenge.

9. The learned counsel for the Insurance Company has



submitted that based on the evidences placed on record, the Tribunal has fixed the notional income of the claimant and the same is not required any enhancement.

10. I have considered the rival submissions made on both sides and also perused the entire records.

11. The Tribunal based on the evidences placed on record regarding income, has fixed the notional income of the claimant as Rs.8,500/-. Even though, it is the case of the claimant that he was a Carpenter and was earning a sum of Rs.30,000/- per month, he was not able to prove his income, hence, Tribunal fixed the notional income as Rs.8,500/-. The accident had happened on 05.10.2018 and by considering the age of the deceased, fixing the notional income of Rs.15,000/- would be just and proper by following the Judgment of this Court in *Andal and 2 others vs. Avinav Kannan and another [2019 (1) TN MAC 54 (DB)]* accordingly the notional income fixed by the Tribunal is hereby revised as Rs.15,000/-.

12. Except modification of Notional income, the claimant has



not raised any grievance against the compensation awarded under other heads. The Tribunal has already awarded 40% of the notional income as future prospects as per the dictum laid down by the Hon'ble Apex Court in *Jagdish vs. Mohan and Others* reported in (2018) 4 SCC 571 and *Erudhaya Priya vs. State Express Transport Corporation Ltd.*, [2020 INSC 466 SC Website]. Accordingly, compensation under the head loss of earning capacity is reworked as follows: Rs.16,12,800/- [$\{15000 + 6000 (40\% \text{ of } 15000)\} = 21000 \times 12 \times 16 \times 40\%$]. As far as the other heads are concerned, the compensation awarded by the Tribunal is just and reasonable and the same are hereby confirmed.

13. Thus the compensation awarded by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Loss of earning power	Rs.9,13,920/-	Rs.16,12,800/-	Enhanced
2.	Transport, Nutrition and attender charges	Rs.36,000/-	Rs.36,000/-	Confirmed



3.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
4.	Loss of amenities and Enjoyment of life	Rs.50,000/-	Rs.50,000/-	Confirmed
5.	Damages	Rs.1,000/-	Rs.1,000/-	Confirmed
	Total	Rs.10,50,920/-	Rs.17,49,800/-	Enhanced by Rs.6,98,880/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.10,50,920/- is hereby enhanced to Rs.17,49,800/- [Rupees Seventeen Lakhs Forty Nine Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The third respondent/ Insurance Company is directed to deposit the award amount, now determined 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 judgment to the credit of M.C.O.P.No.456 of 2019 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already withdrawn. Since this



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Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

02.11.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

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

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.

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