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CMA.No.2255 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

CMA. 2255 of 2014

Dhanapal

...Appellant

Vs

1. M.Gurusamy

2. Shriram General Insurance Company Ltd,
E-8, EPIR, RIICO, Sitapura,
Jaipur,
Rajasthan.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 23.04.2012 made in M.A..C.T.O.P.No.5046 of 2010 on the file of the Motor Accidents Claims Tribunal/(IV Small Causes Court) Chennai.

For Appellant : Mrs.A. Subadra
for M/s.M.Malar

For Respondents : Mr.E.Rajadurai for R2
for Mr.N.Vijayaraghavan
R1 - Exparte

J U D G M E N T

This appeal has been filed by the appellant/claimant seeking enhancement of compensation under the impugned award dated 23.04.2012



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made in M.A..C.T.O.P.No.5046 of 2010 on the file of the Motor Accidents
Claims Tribunal (IV Small Causes Court) Chennai.

2. The case of the claimant / appellant is that on 06.09.2010 at about 21.00 hours, while the appellant was walking along with GST Road, near Meenambakkam Honda Car show room, a mini bus bearing Regn.No.TN-67-AX-5719, proceeding from Guindy to Tambaram, driven by its driver in a rash and negligent manner, dashed against the appellant, due to which, the appellant sustained grievous injuries. Claiming that the driver of the mini bus is solely responsible for the accident, the appellant/claimant has filed a claim petition in M.A..C.T.O.P.No.5046 of 2010 claiming a sum of Rs.6,00,000/- from the respondents.

3. Before the Tribunal, the Appellant/claimant has examined two witnesses and marked as PW1 and PW2 and filed nine documents which were marked as Ex.P1 to Ex.P9. On the side of the second respondent/Insurance Company, neither witness was examined nor filed any document.

4. The Tribunal, based on the oral and documentary evidences has



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career. It has not considered the grievous injuries sustained by the appellant and the treatment taken by him both as in-patient and as out-patient. It ought to award more compensation under the heads of extra nourishment, pain and suffering and damages. It ought to award under the head of attender charges, future medical expenses, loss of amenities. Hence, he prays for enhancement of the Award amount.

6. Per contra, the learned counsel for the second respondent / Insurance Company has submitted that the Tribunal has granted reasonable compensation under various heads and no modification needs to be granted. Hence, he prays to dismiss the Appeal.

7. This Court has considered the said submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. As far as the quantum of compensation arrived at by the Tribunal is concerned, to prove the avocation and income of the appellant P.W.1 has been examined, who deposed that he was working in Postal Department and was earning Rs.20,000/- per month. The disability of the claimant has



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wrongly assessed as 50% based on cross-examination of PW2/Doctor and Ex.P7 to Ex.P9 and only Rs.2000/- for each percentage was awarded by the Tribunal. From the records, it is seen that he has sustained head injury, multiple left rib fracture, left scapula fracture, lung contusion and nasal bone fracture and multiple injuries all over the body and hence the same needs re-visit. This court is of the considered opinion that Rs.3000/- is the correct assessment for each percentage. Similarly, the disability has to be fixed at 60% and thus arrives at Rs.1,80,000/- (3000 x 60%) under the head of disability. The appellant has taken treatment as in-patient as well as out-patient due to the grievous injuries. During the treatment period, he has incurred transport and nourishment expenses and hence, this court is inclined to fix Rs.20,000/- and Rs.15,000/- respectively under the said heads.

9. This Court is of the considered view that due to the nature of injuries sustained by the appellant and period treatment given in the hospital as in-patient, he was prevented from attending his work and hence this court is inclined to fix Rs.38,000/- for calculation of loss of income during the treatment period. Accordingly, the amount awarded towards loss of income stands modified from Rs.28,500/- to Rs.38,000/-. Further, on perusal of records, it is seen that the Tribunal has not awarded compensation under the



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heads of loss of amenities and attender charges for which he is entitled to.

Due to the grievous injuries sustained by the appellant/claimant, he had taken the help of attender and hence a sum of Rs.20,000 is fixed towards attender charges. Similarly, it would be appropriate to award a sum of Rs.25,000/- towards Loss of Amenities.

10. Insofar as the other heads such as pain and sufferings and damages are concerned, the assessment of the compensation awarded by the Tribunal is a just compensation and they do not call for any interference by this Court.

11. In fine, the re-structured compensation, item-wise, would be thus:

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Loss of Income	28,500/-	38,000/-
Transportation	3,000/-	20,000/-
Extra Nourishment	5,000/-	15,000/-
Damages	1,000/-	1,000/-
Pain & Sufferings	50,000/-	50,000/-
Disability	1,00,000/-	1,80,000/-
Attender charges	----	20,000/-



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Award Amount by this Court (Rs.)</i>
Amenities	----	25,000/-
Total	1,87,500/-	3,49,000/-

12. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from Rs. 1,87,500/- to Rs.3,49,000/- along with interest at the rate of 7.5% p.a. from the date of filing of the petition till the date of deposit.

(b) The second respondent/Insurance Company is directed to deposit the entire award amount together with interest from the date of claim till the date of deposit and costs as assessed by the Tribunal, to the credit of M.A..C.T.O.P.No.5046 of 2010 within a period of six weeks from the date of receipt of a copy of this Judgment. Needless to state that the appellant shall pay necessary court fees for the enhanced compensation amount before receiving the copy of this judgment.

(c) On such deposit being made, the Tribunal is directed to transfer



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the award amount along with accrued interest to the bank account of the
appellant/claimant through RTGS within a period of two weeks thereafter.

No costs.

20.06.2023

Index : Yes/No

Internet : Yes/No

gv

To

1. The Motor Accidents Claims Tribunal,
(IV Small Causes Court) Chennai.

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



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A.A.NAKKIRAN, J

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