



CMA.No.2620 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.2620 of 2014

Niruban

.. Appellant

Vs.

1. Thangamani

2.United India Insurance Co., Ltd.,
Cuddalore

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the Judgment and Decree dated 02.08.2013 made in M.C.O.P.No.132 of 2011 on the file of the Motor Accidents Claims Tribunal/(Sub-Court) Chidambaram.

For Appellant : Mr.V.Anand

For Respondents : Ms.I.Malar for R2

No appearance - R1

J U D G M E N T

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 02.08.2013 made in M.C.O.P.No.132 of 2011 on the file of the Motor Accidents Claims Tribunal/(Sub-Court) Chidambaram.



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2. The case of the claimant / appellant is that on 23.09.2010 at about 09.00 p.m., while the appellant was riding his cycle along with other in the left side of the road, a Toyota Qualis car bearing Regn.No.TN-46-C-7170 belonging to the first respondent driven by its driver in a rash and negligent manner, hit the claimant due to which, he sustained grievous injuries hit against the cycle, due to which, the appellant and his pillion rider sustained injuries. Claiming that the driver of the car is solely responsible for the accident, the appellant/claimant has filed a claim petition claiming a sum of Rs.12,00,000/-

3. The Tribunal, based on the oral and documentary evidences and has observed that the driver of the first respondent is responsible for the accident and fastened the liability on the Insurance Company as insurer of the first respondent and ultimately quantified the total compensation at Rs.1,91,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved by which, the claimant / appellant is before this Court.

4. The learned counsel for the claimant / appellant has submitted that the Tribunal has failed to consider the doctor's evidence



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who assessed the partial and permanent disability as 25% and awarded only a sum of Rs.50,000/- which is contrary to the Apex Court Judgment.

He further submitted that the Tribunal has awarded a meagre sum of Rs.35,000/- towards Medical Bills and expenses. He further submitted that the claimant not only suffered head injury but also on his knees due to which he could not sit normally on the floor and even could not lift the normal weight. The Tribunal did not consider the age, income, expectation of life, loss of amenities properly. He further submitted that the Tribunal has failed to award adequate compensation under the heads of nourishment, transport and attender charges. It has failed to award any amount under the head of loss of amenities considering the age and work that he is a Welder. He was aged about 28 years at the time of accident, he was a Welder earning Rs.12,000/- per month. The doctor assessed the disability of the appellant as 25% and thereby the Tribunal has awarded a sum of Rs.50,000/- towards disability. He further submitted that PW2/Doctor deposed that the injured has sustained injuries on the head and knees and grievous injuries all over the body. Immediately after the accident, he was admitted in the R.M.M.C.H, Chidambaram and later to PIMS Hospital, Puducherry from 24.09.2010 to 09.10.2010. But the award granted by the Tribunal under the heads of transport, nutrition, pain and suffering, loss of



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income and attender charges are grossly low, unjust and arbitrary and deserves to be enhanced and in any event, the Tribunal erred in awarding compensation at Rs.1,91,000/- as against the claim of Rs.12,00,000/-. Hence, he prays for enhancement of Award amount.

5. Before the Tribunal, the Appellant/claimant has examined four witnesses and marked PW1 to PW4 and filed twenty documents which were marked as Ex.P1 to Ex.P20 and one material object as MO1. On the side of the second respondent/Insurance Company, neither witness was examined nor any document marked.

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 petition.

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. Based on the evidences of P.W.1 to PW4 and perusing the exhibits in Ex.P1, Ex.P2, Ex.P4, Ex.P5, Ex.P6, Ex.P8, Ex.P11, Ex.P18, the Tribunal has fastened the liability on the Driver of the car, which has to be compensated by the second respondent herein.

9. 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 a Welder and was earning more than Rs.12000/- per month. The disability of the claimant was assessed as 25% based on cross-examination of PW2/Doctor and Ex.P8 to Ex.P10, Ex.P18, Ex.P19 and Rs.2000/- for each percentage which is incorrect and hence the same needs revisit. From the records, it is seen that he has taken treatment in private hospitals even after discharge from the Government Hospital. This court is of the considered opinion that the Rs.3000/- is the correct assessment for each percentage instead of Rs.2000/- and thus arrived at Rs.75000/- (3000 x 25%) towards disability. In respect of income, Rs.10,500/ is fixed as his monthly income and due to the injuries sustained by him, five months is taken for treatment period. Therefore, Rs.52500/- (Rs.10500 x 5 months) is calculated as his loss of earning. During the said treatment period, he has incurred transport expenses and the



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same may be fixed at Rs.15000/-and nutrition may may be fixed at Rs.15,000/- instead of Rs.10,000/- as assessed by the Tribunal.

10. With regard to loss of amenities, the Tribunal has not awarded any amount and hence a sum of Rs.10,000/- is fixed by this court. The Tribunal has awarded Rs.31,500/- towards loss of earning. Considering the socio-economic conditions, this court re-fix the same as Rs.52,500(10500 x 5 months) taking five months for loss of income. This Court is of the considered view that due to the nature of injuries sustained by the appellant and treatment given in the hospital and the period of treatment as in-patient, this court is inclined to take three months for calculation of loss of income. Accordingly, the amount awarded towards loss of income stands modified from Rs.3000/- to Rs.15000/. Further, on perusal of records, it is seen that the Tribunal has not granted compensation under the head of loss of amenities, attender charges and transport expenses. Accordingly, a sum of Rs.15,000/- towards Transport Expenses, Rs.15000 towards Nutrition and Rs.10,000/- towards attender charges respectively is awarded by this court. Due to the grievous injuries sustained by the claimant, he had taken the help of attender and hence award under the attender charges is fixed at Rs.10,000/-.



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

12. 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 earning	31,500/-	52,500/-
Transport	9500/-	15,000/-
Nutrition	10000/-	15,000/-
Medical Expenses	35000/-	35,000/-
Attender Charges	5000/-	10,000/-
Pain & Sufferings	50000/-	50,000/-
Disability	50000/-	75,000/-
Loss of amenities	----	10,000 /-
Total	1,91,000/-	2,62,500/-

13. In the result,

a) this Civil Miscellaneous Appeal filed by the claimant / appellant is **partly allowed**, by enhancing the total amount of compensation from



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Rs.1,91,000/- to Rs.2,62,500/- 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 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.C.O.P.No.132 of 2011 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 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.

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Index : Yes/No

Internet : Yes/No

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To

1. The Motor Accidents Claims Tribunal,
(Sub-Court) Chidambaram

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



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A.A.NAKKIRAN, J

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