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C.M.A.No.1602 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1602 of 2022

S.Shankar

..... Appellant / Petitioner

Vs

1.K.Venkatesan
(R1 - Exparte before the Tribunal)

2.The Manager
New India Assurance Company Limited
Having Office at Motor T.P.Claims
No.232, 6th Floor, NSC Bose Road
Chennai - 600 001.

..... Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to allow this appeal, by enhancing the amount awarded in M.C.O.P.No.236 of 2017 on the file of Motor Accidents Claims Tribunal, (Special Sub Court to deal with Motor Accidents Claims Cases (MACT No.II), Tiruvallur.

For Appellant : Mr.U.Chithambaram



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For Respondents : Mr.Vinod.K for R2

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JUDGMENT

1.1 The claimant had suffered major injuries to his left leg while travelling as a pillion rider, due to an accident that had occasioned when the rider of the motorcycle ran on to a central median in the road. The accident had taken place on 13.05.2017. The victim of the accident was hospitalised atleast thrice, as could be seen from Ext.P5, Ext.P6 and Ext.P7, discharge summaries, and the medical board has determined the percentage of disability at 45%. The accident has literally let to disfiguration of the left leg.

1.2 Seeking compensation he approached the Tribunal, and the Tribunal had awarded both for the permanent disability and also for his loss of earning power in the future. For the former, it reckoned the disability at 45% and for the latter, it reckoned it at 30%, and for arriving at loss of earning power, the Tribunal fixed the income of the victim notionally at Rs.9,000/-. To which, it added another 25% towards future prospects, applied 13 as a multiplier and reduced the total sum by 30%, and determined the value at Rs.5,26,500/-. In all, it awarded Rs.9,28,690/-. The break-up of the award is as below :



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<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Amount (Rs.)</i>
1.	For Permanent Disability	1,57,500.00
2.	Loss of earning capacity	5,26,500.00
3.	Medical Expenses	2,01,690.00
4.	Transport Expenses	2,000.00
5.	Extra Nourishment	3,000.00
6.	Damage to clothing and articles	1,000.00
7.	Pain and Suffering	30,000.00
8.	Attender charges	2,000.00
9.	Loss of happiness and amenities	5,000.00
Total :		9,28,690.00

2. Aggrieved by the perceived inadequacy of this award, the claimant is before this Court with this appeal.

3. The learned counsel for the appellant submitted that the appellant was a lorry driver and he has produced Ext.P11, driving licence. Due to the injuries suffered, he could not effectively engage in his avocation. In an accident that took place in 2017, the Tribunal has fixed the notional income at very lowly. This apart, even on conventional heads of compensation, the Tribunal has been parsimonious in granting compensation.



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4. Heard the learned counsel appearing for the second respondent. The learned counsel submitted that the compensation awarded by the Tribunal is just fair and reasonable.

5. This Court weighed the rival submissions and also perused the documents, more particularly, Ext.P5, Ext.P6, Ext.P7, Ext.P11, Ext.P12 and Ext.C1. It is seen from Ext.P12, photographs that the site of injury leaves terrible scars and his left leg is massively disfigured. And given the fact that he was a driver, this Court considers it appropriate to fix the monthly income of the appellant at Rs.12,000/-, and added another 25% towards future prospects. To which it applied 13 as a multiplier and reducing the total sum arrived by 30%, the compensation now determined on the head of loss of future earning capacity ($\text{Rs.12,000} + 25\% \times 12 \times 13 \times 30\%$) is Rs.7,02,000/-. So far as the compensation on the conventional heads are concerned, it enhances the award amount only on the heads of transportation, extra nourishment, pain and suffering, and attendant charges etc., as detailed below. And as concerning the award on the heads of permanent disability, medical expenses, damages to clothing and articles, the award of the Tribunal is retained. Since the compensation awarded by the Tribunal under the head "loss of happiness



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and amenities' has been adjusted against the other conventional heads, the same is not considered by this Court. The award amount is accordingly re-worked as shown below:

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Revised Award Amount (Rs.)</i>
1.	For Permanent Disability	1,57,500.00
2.	Loss of earning capacity	7,02,000.00
3.	Medical Expenses	2,01,690.00
4.	Transport Expenses	10,000.00
5.	Extra Nourishment	15,000.00
6.	Damage to clothing and articles	1,000.00
7.	Pain and Suffering	50,000.00
8.	Attender charges	10,000.00
Total :		11,47,190.00

6. To conclude, the appeal is partly allowed, and this Court enhances the compensation from 9,28,690/- to Rs.11,47,190/-. The respondent/insurance company is now required to deposit the said sum with interest at the rate of 7.5% less (a) any amount which has been already deposited; and (b) interest payable for 135 days delay in filing the appeal, within a period of six weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes / No



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N.SESHASAYEE.J.,

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To:

1.The Special Subordinate Judge
Special Sub Court to deal with
Motor Accident Claims Tribunal No.II
Thiruvallur.

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

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